

THE HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR

And

THE HONOURABLE SMT. JUSTICE T. RAJANI

C.M.A.No.121 of 2006

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

1) The appellant, who is the wife of the respondent, filed the present appeal under Section 28 of the Hindu Marriage Act, aggrieved by the order and decree dated 07.12.2005, passed in O.P.No.55 of 2000 on the file of the Assistant Sessions Judge at Sangareddy, wherein and whereunder a petition filed by the husband under Section 13 (1) (1-a) (1-b) of Hindu Marriage Act, for dissolution of the marriage, was allowed.

2) The appellant-wife is the respondent where as the respondent-husband is the petitioner in O.P.

3) The averments in the O.P. are as under:

The marriage between the appellant and respondent took place between 35 years prior to filing of the O.P. After the marriage, both of them lived at Errapahad village with the parents of the respondent. Within a week of the marriage, the appellant left the place to go to her mother's place. The respondent was forced to search her and later

on traced her in the house of her mother at Gopalpet. When questioned, the appellant seems to have stated that she is not interested to live with his parents. Thereafter, the appellant lived with the respondent for a period of ten days in a month and then used to go to the house of her mother without informing anyone. In the year 1973, the respondent got job and took a separate house, but the appellant refused to discharge her minimum obligations. Out of wedlock, they blessed with two daughters and one son and all of them are now married and living along with their families. It is stated that the appellant has a tendency of humiliating and torturing the respondent from the date of marriage and was also of sadistic character. In order to purchase peace, the respondent transferred his ancestral property ie., house bearing No.5-6-3/ 6, NGO's Colony, Kamareddy, in the name of the appellant and she is getting a monthly rent of Rs.3,000/- from the said house. After the marriage of second son, the appellant started demanding the respondent to transfer another house into her name and without informing him, she left his house and filed O.S.No.101 of 2000. Thereupon, the respondent filed O.P.No.512 of 2000 seeking divorce. In view of the compromise, the suit and divorce petition were dismissed, as not pressed, on 15.09.2000. The appellant was in the habit of talking loudly

and abusing the respondent in filthy language in the presence of his colleagues. It is stated that the respondent went to Kamareddy in the month of November, 2000 to collect the rents of his house, but the appellant with the help of her brother, did not permit him to collect the rents. On the other hand, she abused him and beat him. It is alleged that the appellant forcibly took possession of the house belonging to the respondent at Kamareddy and collected rents at the rate of Rs.6,000/- per month. It is stated in the petition that the appellant and her brother used to make telephone calls to his office and threaten him with dire consequences. The appellant filed O.S.No.51 of 2000 on the file of the Junior Civil Judge, Kamareddy on 13.03.2002 against the respondent for perpetual injunction and obtained ad-interim injunction. Subsequently, the said suit was dismissed for default. While things stood thus, the respondent was transferred to Hyderabad and during his stay at Hyderabad, the appellant sent some anti-social elements to his house and threatened him with dire consequences stating that if he does not transfer all the properties in the name of the appellant, he would be killed. Therefore, the respondent lodged a complaint at Sultan Bazar Police Station Hyderabad on 23.12.2002 and sought police protection. It is also stated that the appellant and her son forcibly taken

possession of the flat purchased by the respondent situated at Miyapur, after evicting the tenant. When questioned the same, the appellant abused the respondent and threatened that she will make his life more miserable in future and thereby caused mental agony.

4) A counter came to be filed by the appellant denying the averments in the petition except admitting the marriage and birth of the children. It is stated that at the time of marriage, the father of the appellant gave Rs.10,000/- cash, 60 tolas of gold ornaments and 3 kgs. of silver articles. It is said that the respondent used to harass the appellant by his uneven mentality. It is further stated in the counter that the house bearing Nos. 5-6-3/6 and 5-6-3/7 situated at NGO's colony, Kamareddy, were constructed from out of the funds raised by her father; that the respondent got bad vices and when he tried to alienate the said two houses, she filed O.S.No.51 of 2002 for perpetual injunction. It is also stated that the respondent drove her away from the matrimonial home, as such, she filed O.S.No.101 of 2000 and as a counterblast to the said suit, the respondent filed Divorce OP No.512 of 2000. Due to intervention of the family members and others, both the cases were compromised on a condition that both of them should continue their matrimonial relationship. It is stated that after the said

cases ended in compromise, the respondent did not take the respondent to his house and postponed to comply with the terms of the compromise on one pretext or the other. Within one month after the compromise, the present divorce petition came to be filed. Hence, pleaded that the petition seeking divorce is liable to be dismissed.

5) In support of his case, the respondent got examined himself as PW.1 and one T.Surender Reddy and S.Srinivas as PWs.2 and 3. He also got marked Exs.A1 to A5. Whereas the appellant examined herself as RW.1, her son Naveen Kumar as RW.2 and her brother Sudhakar as RW.3 apart from marking Exs.B1 to B5.

6) Basing on the averments, the trial Court framed the issue as to “whether the petitioner is entitled for grant of divorce with the respondent, as prayed for?”

7) After considering the evidence available on record, the trial Court granted divorce. Assailing the same, the present appeal came to be filed by the respondent-wife.

8) It is to be noticed here that the appellant and the respondent are aged about 48 and 52 years respectively when the O.P. was filed in the year 2000. Now, the respondent is aged about 70 years while the appellant must be aged about 65 years. It is also not in dispute that the

two daughters and one son, who were born to them, also got married and they are living separately and happily.

9) The two grounds raised by the learned counsel for the appellant that the trial Court committed an error in holding that there was a desertion and further erred in holding that there was cruelty since all the witnesses examined, to speak about the acts of cruelty, refer to the incidents which took place after filing of the O.P.

10) Insofar as the desertion is concerned, it is to be noted that the findings of the trial Court appears to be incorrect for the reason that in the cross-examination PW.1 admits that both of them lived together till 06.10.2000 on which date the wife left his company. It would be appropriate to extract that portion in the cross-examination, which is as under:

“On 17 or 18th September, 2000, I brought the respondent to my official quarter. Thereafter the respondent stayed with me in the official quarter for about 15 days. It is not true to say that I have filed the present petition while the respondent was staying in the house of Balraj and I was staying away from her. I have shown the address of respondent at Gopalpet (v) of Nizamabad District, in the cause title of petition, as the respondent left my company on

06.10.2000, while residing in the official quarter.

I have sent the respondent to see her father, who became serious, within about two or three days, the respondent return back to my house.”

11) From the answers given by PW.1-husband, it appears that the wife lived with him till October, 2000. That being the position, filing of O.P. on 20.10.2000 would not satisfy the requirement of Section 13 of the Hindu Marriage Act, seeking dissolution of marriage on the ground of desertion.

12) The next ground which was urged by the learned counsel for the appellant is that the alleged acts of cruelty referred to in the evidence of the witnesses took place after filing of the O.P. and that the same cannot be made the basis to grant divorce.

13) In *Malathi Ravi, M.C. v. B.V.Ravi, M.D.*¹ the Apex Court in Para No.27 observed as under:

“From the acceptance of the reasons of the High Court by this Court, it is quite clear that subsequent events which are established on the basis of non-disputed material brought on record can be taken into consideration. Having held that, the question would be whether a decree for divorce on the ground of mental cruelty can be granted. We have already opined that the ground of desertion has not been proved. Having not accepted the ground of desertion, the two issues that remain for consideration whether

¹ (2014) 7 SCC 640

the issue of mental cruelty deserves to be accepted in the obtaining factual matrix in the absence of a prayer in the relief clause, and further whether the situation has become such that it can be held that under the existing factual scenario it would not be proper to keep the marriage ties alive.”

14) From the judgment of the Apex Court referred to above, it is clear that even subsequent events which are established on the basis of un-disputed material brought on record, can be taken into consideration.

15) In the instant case, a perusal of the material on record show that the appellant-wife filed O.S.No.101 of 2000, restraining her husband from alienating the property. As a counter blast, divorce O.P. came to be filed and both the cases ended in a compromise on a condition that both of them should continue to live in good matrimonial relationship.

16) As seen from the averments in the affidavit and the evidence, both sides made allegations and counter allegations of ill treatment and harassment against each other from the date of marriage. In fact their marriage took place when both of them were aged about 18 and 20 years respectively. The husband studied B.E. by staying in Vysya Hostel for about six years and even before completing his engineering course, he had two daughters. After getting a

job in the year 1973 ie., nearly six years after the marriage, both of them, along with their daughters, were staying in separate house, during which time they were blessed with a male child. Subsequently, the marriages of the daughters and son came to be performed. It appears that real differences arose at the time of fixing the marriage alliance of their second daughter. It is the case of the husband that only after he transferred the ancestral property in the name of appellant, she agreed to perform the marriage of their second daughter with the person decided by him. After the marriage of his son, his wife started demanding for transfer another house in her name and without informing him, she left the house and filed O.S.No.101 of 2000.

17) The evidence of PW.1 shows that after filing of O.S.No.101 of 2000, he also filed a divorce petition, which ended in compromise. He deposed that his wife stayed with him for a period of two days and thereafter again started black mailing tactics by demanding him to transfer another house situated at Kamareddy in her name. It is said that his wife used to abuse him in filthy language. On 06.10.2010 his wife left his house along with entire cloths, gold ornaments and other articles. In the month of November, 2000, when the husband went to Kamareddy for collecting rents, the appellant-wife with the help of her brother not only

prevented him to collect the rents but also abused and beat him. It is said that in the month of December, 2002, appellant-wife sent some antisocial elements to his office at Hyderabad, who threatened him with dire consequences. The appellant-wife threatened him stating that if he does not transfer all the properties in her name, she will make his life more miserable in future. The evidence of PW.1 shows that he was insulted in the office as well. It is also pleaded that telephone calls were made by the appellant-wife threatening him with dire consequences if the property is not transferred.

18) PW.1 was cross-examined at length. The cross-examination reveals not only about the marriage of the children but also disputes between the parties and also filing of the suits. O.S.No.51 of 2012 filed for perpetual injunction restraining the husband from alienating the properties at Kamareddy, was contested by filing written statement. Subsequently the property at Kamareddy was transferred in the name of wife.

19) PW.2, was working along with the respondent in the telecom department. According to him, while he was in the office in the month of December, 2002, two persons unknown to him, came to their office, had heated exchange

of words with the respondent. He entered into the chamber of the respondent along with three or four other staff members and noticed the said two persons, threatening the husband, to transfer the house properties in the name of his wife otherwise they will see his end. They advised the two strangers not to create galata in the office and if they have any grudge or claim they can settle the matter outside.

20) Similar is the evidence of PW.3, who, in his evidence deposed that in the year 2000, the respondent was transferred to their office since then the appellant and respondent were living in the quarters situated just opposite to their office. During their stay at Sangareddy, the wife used to quarrel and abuse the husband every day in insulting manner. Several times she used to come to the office and abuse the husband in the presence of other staff members. One day the appellant-wife along with another person started beating the respondent. He further deposed that several times the respondent was insulted and humiliated before others by the appellant.

21) It is true that the specific instances of harassment and humiliation to the respondent-husband, which are mentioned in the evidence, relate to acts after filing of divorce O.P. But one fact is to be noted that even earlier he

filed divorce O.P. making allegations of harassment, which was subsequently withdrawn due to compromise arrived at between the parties. Since there was no change in the attitude of the wife, another divorce O.P. came to be filed within a short time. In view of the judgment of the Apex Court referred to above, subsequent events also can be taken into consideration for deciding as to whether there was any cruelty. Things would have been different had there been only the evidence of PW.1 and RW.1. But in the instant case, two other employees of the respondent-husband, were examined to prove the acts of the appellant-wife. Both the witnesses, who were working in the same office, speak about the behaviour of the appellant-wife at their office. From the attitude and the treatment by the appellant-wife, it can be inferred that the husband has been treated with mental cruelty and definitely he must have faced ignominy being an employee of BSNL. When one enjoys social status working in government office, this kind of behaviour will put him down in front of his subordinate staff and he would not be enjoying the same reputation which he would otherwise enjoy. It certainly must have affected his self-respect and human sensibility.

22) Dealing with the situation like this, the Apex Court in *Malathi Ravi, M.C. v. B.V.Ravi, M.D* (1 supra) observed as under:

“44. From this kind of attitude and treatment it can be inferred that the husband has been treated with medical cruelty and definitely he has faced ignominy being an Associate Professor in a Government Medical College. When one enjoys social status working in a government hospital, this humiliation affects the reputation. That apart, it can be well imagined the slight he might be facing. In fact, the chain of events might have compelled him to go through the whole gamut of emotions. It certainly must have hurt his self-respect and human sensibility. The sanguine concept of marriage presumably has become illusory and it would not be inapposite to say that the wife has shown anaemic emotional disposition to the husband. Therefore, the decree of divorce granted by the High Court deserves to be affirmed singularly on the ground of mental cruelty.”

23) Having regard to the circumstances stated above, we feel that the order under challenge requires no interference. Apart from that, it is also to be noted that both of them are living separately since last 18 years. In similar circumstances, the Apex Court in *S.Brahmanandam*

v. S.Rama Devi², held that once efforts for reunion do not fructify, forcing couple to stay together will prove counter productive and it is bound to be source of greater misery for parties. Similarly in Kalapatapu Lakshmi Bharati v. Kalapatapu Sai Kumar³ it is held that when the parties have been living separately for nearly 14 years, there can be no escape from the conclusion that the marriage has irretrievably broke down, and as held by the Hon'ble Supreme Court, a long time separation itself would lead to mental cruelty.

24) In view of the judgment referred to above and having regard to the facts and circumstances, we feel that the divorce granted by the trial Court requires no interference.

25) Accordingly, the appeal is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this appeal shall stand closed.

² 2017(1) ALD 241(DB)

³ (2017(1) ALD 272 (DB)

JUSTICE C. PRAVEEN KUMAR

JUSTICE T. RAJANI

09.08.2018
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