

THE HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR

And

THE HONOURABLE Mrs. JUSTICE T. RAJANI

C.M.A.No.300 of 2006

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

1) The present appeal came to be filed under Section 28 of the Hindu Marriage Act, aggrieved by the order and decree dated 08.11.2005, passed in H.M.O.P.No.52 of 2004 on the file of the Senior Civil Judge, Khammam, wherein an application filed by the appellant under Section 13 (ia) and (ib) of Hindu Marriage Act, 1955 (for short, 'the Act'), seeking dissolution of marriage, was rejected.

2) For the sake of convenience, the parties will hereinafter be referred to as arrayed in the H.M.O.P.

3) The facts in issue are as under:

(i) The marriage between the petitioner-husband and respondent-wife was performed on 22.06.1988 at Hanumakonda. The respondent was related to the petitioner prior to the marriage and even prior to the marriage, the respondent was mentally un-sound. Out of wedlock, they were blessed with one female child, who was aged about 16 years at the time of filing the O.P. It is stated that due to unsoundness of mind, the respondent got treated by several psychiatrists and the respondent used to suspect the petitioner and

always quarrel with the petitioner. It is stated that she left the company of the petitioner on 01.04.2000, without any reason and from thereafter they started living separately. The petitioner used to send Rs.1,000/- to his wife for treatment till 2002. It is stated that before filing of the petition, the petitioner got issued a legal notice to the respondent for which she replied denying the averments. Hence, the O.P. came to be filed for dissolution of marriage on the grounds of cruelty and desertion.

(ii) A counter came to be filed by the respondent admitting their relationship. It is stated that the petitioner beat her several times, kept her in a dark room and also insisted her to get the retirement benefits from her father, for which she had to take treatment from a psychiatrist, due to frustration and headache. Though the matter was placed before the elders, nothing eventful happened.

(iii) In support of his case, the petitioner examined PWs.1 and 2 and got marked Exs.A1 to A3, while the respondent/wife got examined PWs.1 and 2, but no documents were marked.

(iv) Basing on the material available on record, the Court below dismissed the O.P. filed by the husband seeking divorce. Challenging the same, the present appeal came to be filed.

4) The point that arises for consideration is whether the petitioner is entitled for the relief prayed by him?

5) As stated earlier, the present O.P. came to be filed seeking dissolution of marriage on the grounds of cruelty and desertion. The main ground urged by the learned counsel for the petitioner/ appellant is that the respondent is suffering from mental disorder and as such he is entitled for divorce on the ground of cruelty.

6) The petition filed by the husband would itself show that the fact of respondent is of unsound mind is known to the husband even prior to the marriage. Therefore, we feel that the said ground, which is sought to be raised by the petitioner to prove cruelty on unsoundness of mind cannot be accepted. Infact, the Apex Court in *Ram Narain Gupta Vs. Smt. Rameshwari Gupta*¹ while dealing with Section 13(1)(iii) of Hindu Marriage Act, 1955, observed that mere existence of mental disorder of any degree is the sufficient in law to justify the dissolution of a marriage. The Court held that the context in which the ideas of unsoundness of 'mind' and 'mental disorder' occur in the section as grounds for dissolution of a marriage, require the assessment of the degree of the 'mental disorder'. Its degree must be such that the spouse seeking relief cannot reasonably be expected to live with the other. All mental abnormalities are not recognized as

¹ (1988) 4 SCC 247

grounds for grant of decree. The medical concern against too readily reducing a human being into a functional nonentity and as a negative unit in family or society is law's concern also and is reflected, at least partially, in the requirements of Section 13(1)(iii). The Court further held that the personality disintegration that characterizes schizophrenia may be of varying degrees. Not all schizophrenics are characterized by the same intensity of the disease. The burden of proof of the existence of the requisite degree of mental disorder is on the spouse basing the claim on that state of facts.

7) In *Kollam Chandra Sekhar Vs. Kollam Padmalatha*², the Apex Court categorically held that mere existence of mental disorder is insufficient to justify dissolution of marriage. The Court held that it has to be proved that the other party is suffering with serious mental disorder, cannot simply abandon the other spouse because the latter is suffering from sickness.

8) Apart from that it is also to be noted that the petitioner never made an application seeking dissolution of marriage on the ground of mental disorder, but the application was on the grounds of desertion and cruelty. In support of his contention, the petitioner took us through the order passed in maintenance case to show that respondent is suffering with some mental disorder. If really, that was so, the petitioner should have examined at least one of the doctor to

² (2014) 1 SCC 225

prove that she was suffering with mental disorder and also the intensity with which she is suffering.

9) Further, the respondent in her cross examination admits that she was being treated by Dr. Indla Rama Subba Reddy and another doctor, who are Neurologists and Psychiatrists. She admits that she is suffering with mental disorder and is unable to take care of her daughter. That by itself does not mean that her mental disorder is such that it warrants divorce on the ground of cruelty. Infact, as observed earlier, the petitioner was aware of mental condition prior to their marriage. Hence, the plea of the petitioner seeking divorce on the ground of mental disorder cannot be accepted, in the absence of any evidence of cruelty.

10) Coming to the plea of desertion, learned counsel for the appellant would contend that since 2000, the petitioner is living separately without any cause and as such the appellant is entitled for divorce on the ground of desertion of his wife. But the evidence on record does not indicate the same. The evidence of PW1 shows that the respondent is none other than daughter of his paternal uncle and out of the said relation, PW1 used to visit the house of the respondent from childhood, but when he himself proposed to marry the respondent, the father of the respondent rejected the same as he was un-employed by then. After getting the job, the respondent got married with the petitioner. It is stated that the marriage was

performed on 22.06.1988 at Jakriya Function Hall at Hanumakonda. Out of wedlock, they were blessed with a female child Satya Anusha. It is stated that the petitioner is working as a salesman in Brookebond products of Hindustan Lever Limited. It is stated by RW1 in her chief examination that the petitioner got addicted to bad vices, used to come home late in the night and harass the respondent demanding additional dowry and also beat her in aggression without any reason. This attitude of the husband resulted to severe headache to her. It is also stated that the petitioner neither allowed his child nor the neighbours to speak to her mother. With a hope that her husband would change, the respondent did not complain about the harassment made by the husband to others. It is further stated that the petitioner used to harass the respondent to get the retirement benefits of her father, for his bad vices. When she refused to do so, the petitioner used to beat her. Though RW1 was cross-examined at length, nothing useful came to be elicited to disprove his evidence.

11) At the time when the matter is taken up for hearing, we were informed that inspite of service of notice on respondent, there is no representation. Hence, Sri K.Vasantha Rao, Advocate, was appointed by legal aid to assist the Court. Even Sri K.Vasantha Rao, learned counsel for the respondent states across the Bar that though he wrote a registered letter to the respondent, there is no response, in spite of service of the said letter. Even the learned counsel for the

petitioner/ appellant would submit that his client is not in touch with him and there is no response to letters.

12) From the above, it appears that both the parties are not interested in proceeding or contesting the matter.

13) Admittedly, the respondent and the petitioner are living separately since last 18 years. Therefore, the question of respondent joining the husband, even if the appeal is dismissed, would not arise.

14) The Division Bench of this Court in *Kalapatapu Lakshmi Bharati Vs. Kalapatapu Sai Kumar*³, while dealing with an identical issue held as under:

“In the light of the undisputed fact that the parties have been living separately for nearly 14 years, there may be no escape from the conclusion that the marriage has irretrievably broken down. As held by the Supreme Court, a long time separation itself would lead to mental cruelty. Therefore, irrespective of the findings of the lower Court on the failure of the appellant to prove mental cruelty, she is entitled to a decree for dissolution of marriage on the sole reason that there is no possibility for reunion of the parties in order to live together. Since the marriage between the parties has irretrievably broken down, any attempt to force the parties to live together would tantamount to causing mental cruelty and would only prolong the mental agony of the parties for the rest of their lives.

In the afore-mentioned facts and circumstances of the case, HMOP No.310 of 2004 is decreed and HMOP No.270 of 2005 is dismissed. Both the appeals are allowed.”

³ {2017 (1) ALT 131 (DB)}

15) In *Samar Ghosh Vs. Jaya Ghosh*⁴, the Hon'ble Supreme Court held as under:

Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties.

16) Further the Apex Court in *Kohli Vs. Neelu Kohli*⁵ held as under:

We have been principally impressed by the consideration that once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases do not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

Public interest demands not only that the married status should, as far as possible, as long as possible, and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

⁴ 2007 (3) ALT 62 (SC)

⁵ {2006 (4) SCC 558}

Since there is no acceptable way in which a spouse can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied for ever to a marriage that in fact has ceased to exist.

Some jurists have also expressed their apprehension for introduction of irretrievable breakdown of marriage as a ground for grant of the decree of divorce. In their opinion, such an amendment in the Act would put human ingenuity at a premium and throw wide open the doors to litigation, and will create more problems than are sought to be solved.

The other majority view, which is shared by most jurists, according to the Law Commission Report, is that human life has a short span and situations causing misery cannot be allowed to continue indefinitely. A halt has to be called at some stage. Law cannot turn a blind eye to such situations, nor can it decline to give adequate response to the necessities arising therefrom.

When we carefully evaluate the judgment of the High Court and scrutinize its findings in the background of the facts and circumstances of this case, then it becomes obvious that the approach adopted by the High Court in deciding this matter is far from satisfactory.

17) In the light of the undisputed fact that the parties are living separately since last 18 years, it is clear that the marriage between the parties has irretrievably broken down and any attempt to force the parties to live together would tantamount to causing mental cruelty and would only prolong the mental agony of the parties for the rest of their lives. As held by the Apex Court, long separation itself would amount to mental cruelty.

18) For the aforesaid discussion, the appeal is allowed setting aside the orders passed in H.M.O.P. No.52 of 2004 on the file of the Court of Senior Civil Judge, Khammam, and dissolving the marriage between the appellant/ husband and respondent/ wife, which was performed on 22.06.1988. There shall be no order as to costs.

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

C. PRAVEEN KUMAR, J

12.07.2018
vnb

T.RAJANI, J

