

THE HONOURABLE SRI JUSTICE C. PRAVEEN KUMAR

And

THE HONOURABLE Ms. JUSTICE J.UMA DEVI

C.M.A.No.479 of 2007

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 dated 23.01.2007, passed in O.P.No.30 of 2004 on the file of the Principal Senior Civil Judge, Ongole, wherein an application filed by the appellant under Section 13 of Hindu Marriage Act, 1955 (for short, 'the Act'), seeking dissolution of marriage, was dismissed.

2) Originally, the petition came to be filed under Section 13 of the Act, for a decree of divorce, but subsequently I.A.No.2104 of 2004 came to be filed to declare the marriage between the parties as null and void. Accordingly, the prayer in the original petition was amended as sought for by the parties.

3) The facts in issue are as under:

The respondent is the deserted wife of one U.Satyanarayana-petitioner. When the petitioner was studying M.Com., the respondent developed friendship with him at Chirala, where he was studying by then. It is stated that on 11.03.2003 at 03.00 p.m., the respondent's brother and relatives with the help of SI of Police, II

Town Police Station, Chirala, forcibly took the petitioner from Uppugunduru to Chirala and performed his marriage with the respondent on 12.03.2003. Subsequently, the petitioner escaped from the hands of the respondent and lodged a report against the parents of the respondent-wife. A counter came to be filed refuting the allegations made in the petition. It is stated that the respondent earlier married one Ullagola Satyanarayana on 29.06.1996 and the said Satyanarayana filed OP No.87 of 1998 and obtained a decree of divorce on 03.02.1999. Since then the respondent was living at Uppugunduru village with her father. At that time, the petitioner loved her and later cheated her. When the same was informed to the Superintendent of Police, Ongole, the police in turn enquired into the matter and in the counseling, the petitioner admitted his mistake and married the respondent in the presence of elders. After marriage, the petitioner set up his family with the respondent at Yekalavyanagar, Ongole and lived there for one month. It is averred that during the period of stay, the petitioner harassed and ill-treated the respondent by demanding additional dowry, beat her and necked her out from the house at Ongole. Basing on the said allegations and pursuant to the report given by the respondent, a case in Crime No.34 of 2003 came to be filed, which is pending before the Magistrate Court. It is urged that as a counter blast to the said criminal proceedings, the present petition came to be filed.

4) In support of his case, the appellant/husband got examined PWs.1 to 7 and got marked Exs.A1 and A9, while the respondent/ wife got examined RWs.1 to 4 and got marked Exs.B1 to B3.

5) 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.

6) At the time when the matter is taken up for hearing, learned counsel for the respondent filed an affidavit before this Court in I.A.No.1 of 2018 in CMA No.479 of 2007, wherein it is stated that the appellant had married again, though the OP was dismissed. It is further stated that on the advise of her (respondent) parents, both of them entered into a compromise to dissolve the marriage by mutual consent. But, later, the appellant has not come forward to sign the application for divorce by mutual consent. It is further stated that the respondent herself is not interested in prosecuting the above appeal and the same may be closed by passing appropriate orders, so as to enable her to marry and lead a happy married life.

7) It would be useful to extract relevant portion of the affidavit in I.A.No.1 of 2018, which reads as under:

“I submit that now as the appellant has already married again and as he is no showing any interest in dissolving the marriage with me by mutual consent, I have no interest in prosecuting the above

appeal and same be closed by passing appropriate orders so as to facilitate me to marry and live happy married life.”

8) In view of the above, it may not be necessary to go into the issue as to whether there was any quarrel between the parties, or whether the marriage was performed forcibly. Admittedly, the respondent and the petitioner are living separately since last 15 years. Therefore, the question of respondent joining the husband, even if the appeal is dismissed, would not arise. Infact, she sought for divorce so as to enable her to marry again and lead a peaceful life. The affidavit in I.A.No.1 of 2018 is signed by the respondent/ wife on 06.02.2018 and the same was filed in the registry by the counsel. No counter is filed by the appellant denying the version of the wife.

9) The Division Bench of this Court in *Kalapatapu Lakshmi Bharati Vs. Kalapatapu Sai Kumar*¹, 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

¹ {2017 (1) ALT 131 (DB)}

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.”

10) In *Samar Ghosh Vs. Jaya Ghosh*², 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.

11) Further the Apex Court in *Kohli Vs. Neelu Kohli*³ 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

² 2007 (3) ALT 62 (SC)

³ {2006 (4) SCC 558}

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.

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.

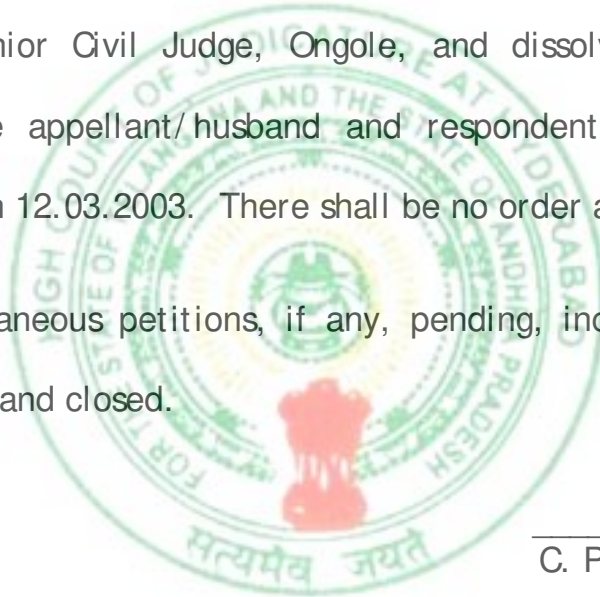
When we carefully evaluate the judgment of the High Court and scrutinize its findings in the background of the facts and circumstances of this case, then it becomes obvious that the approach adopted by the High Court in deciding this matter is far from satisfactory.

12) In the light of the undisputed fact that the parties are living separately since last 15 years, it is clear that when 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. Further, the wife who is the respondent herein pleads that she is no longer interested in prosecuting the appeal and requested the case to be closed by passing appropriate orders so as to facilitate her to marry and live a happy married life in future.

13) For the aforesaid discussion, the appeal is allowed setting aside the orders passed in OP No.30 of 2004 on the file of the Court of Principal Senior Civil Judge, Ongole, and dissolving the marriage between the appellant/husband and respondent/wife, which was performed on 12.03.2003. There shall be no order as to costs.

14) Miscellaneous petitions, if any, pending, including I.A.No.1 of 2018, shall stand closed.



C. PRAVEEN KUMAR, J

J. UMA DEVI, J

15.02.2018
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