

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE SMT JUSTICE T. RAJANI

CIVIL MISCELLANEOUS APPEAL No.552 of 2006

JUDGMENT: (per Hon'ble Smt Justice T. Rajani)

Assailing the order of the Senior Civil Judge, Wanaparthy in HMOP.No.16 of 2005, dated 14.03.2006, the appellant-petitioner preferred the present appeal under Section 28 of the Hindu Marriage Act (for short 'the Act'). The petition in which the impugned order is passed is filed under Section 13(1)(a) 1 (b) (iii) of the Act by the petitioner therein, who is the husband of the respondent herein, seeking divorce.

2. For the sake of convenience, the parties will hereinafter be referred to as arrayed in the original petition. The facts, as put forth by the petitioner in the original petition filed in the Court below, are briefly as follows:

The petitioner and the respondent got married on 31.05.2002 and were blessed with a son. After delivery, the respondent refused to come to the house of the petitioner, without any reason. Petitioner went to the house of his in-laws for about ten times but his request was bluntly refused. Then, he got issued a legal notice on 23.03.2004. On receiving the notice, the respondent joined him along with her mother and stayed only for one week and left him without even informing him. The respondent in order to create fear in the mind of the petitioner gave complaint to the police alleging that he demanded dowry

and tortured her. On enquiry, the police found the allegations baseless and closed the case.

The respondent and her mother levelled allegations against the petitioner, in public, that he is impotent and is not dare enough to come out from his family. On one occasion the respondent removed her Mangalasutram and threw it away stating that he is not a fit man to be her husband. The elders convinced her that she should not behave like that. The respondent also suffered from mental disorder, even prior to marriage and the same was suppressed at the time of marriage. The respondent, in spite of promising the petitioner that she would not resort to criminal action, filed a criminal case against him. There is continuous desertion since 08.01.2003 and also mental cruelty, hence, the petitioner sought for divorce.

The respondent denied the averments made in the petition through her counter and further stated that the petitioner issued legal notice on 22.03.2004 with a pre-plan and that she never harassed the petitioner. After filing criminal case, the petitioner, along with mediators, approached her and stated that they will not harass her in future, hence, she kept quiet. Taking undue advantage of her goodness, a false story is created. She denied having removed Mangalasutram from her neck and also that she has been suffering from mental disorder. She also expressed her willingness to get check up with a doctor, in order to disprove the same. She further stated that the petitioner himself left her to her fate and never bothered about the marital life. She also

denied the continuous desertion and the harassment alleged against her. She further requests the petitioner to continue conjugal life smoothly. She also denied having declared the petitioner as impotent.

During the trial of HMOP, P.Ws.1 to 3 were examined on behalf of the petitioner and Exs.P1 to P7 were marked. On behalf of the respondent, R.Ws.1 to 4 were examined. On appreciation of the evidence and material on record, the Court below passed the impugned order dismissing the petition filed by the petitioner, seeking divorce.

3. Challenging the same, the present appeal came to be preferred on the grounds that the Court below ought to have seen that having accepted the utterances of impotency, it should have accepted the ground of mental cruelty. The Court below ought to have seen that the respondent refused to live with the appellant and in the presence of the elders, removed her thali and threw it at her husband. The Court below ought to have seen that the intention of the respondent, in giving complaint under Section 498-A IPC twice and getting the appellant and his parents arrested, is nothing but harassment. The Court below erred in observing that the claim of the appellant was that the mother of the respondent has been instigating the respondent to behave against the appellant and that the respondent cannot be attributed with malafides. The Court below ought to have seen that the initial the motive of the appellant was to make the respondent to live with the appellant, but subsequent events are

the cause for seeking divorce. The Court below ought to have seen with regard to the mental disorder and that the respondent did not have independent power of thinking. The Court below ought to have seen that the marriage was admittedly performed on 31.05.2002 and the petition was filed for divorce on 23.02.2005. Notice was given to the respondent on 23.03.2004, demanding restitution of conjugal rights. The respondent lived in the house of the appellant along with her mother for just a week and again deserted him. In the circumstances, the short period of living with the appellant without an intention to live would not constitute a reunion, for the purpose of computation of limitation. Based on the above grounds, the appellant seeks this Court to set aside the judgment of the Court below.

4. Heard both sides.

5. The grounds on which the petition was filed are cruelty, desertion, and incurable unsoundness of mind of the respondent. Hence, our consideration shall be:

Whether the petitioner could prove any of the grounds that are put forth by him and whether he is entitled for divorce as sought for.

6. Firstly, the ground of desertion can be looked into. It would require only a limited examination of the evidence brought before the Court, as the finding of the Court below is that the statutory period of two years is not fulfilled. Section 13(1)(ib) of the Act specifies that unless there is desertion for a continuous

period of not less than two years, immediately preceding the presentation of the petition, the petition shall not be filed on that ground. Though petitioner as P.W.1, forgetting his pleadings, denies that there was reunion between himself and the respondent after 08.01.2003, the suggestion given on his behalf, to the witnesses examined on behalf of the respondent, show that the respondent joined the petitioner. The suggestion given to R.W.4 would clearly amount to an admission by the petitioner that the respondent joined him. The suggestion is, that after the petitioner got issued legal notice only, the respondent went and joined the petitioner. In the petition, it is clearly averred that the respondent joined the petitioner for a short time, after he issued the legal notice. The legal notice was rightly considered by the Court below as the one given on 22.03.2004, marked as Ex.P2. The case of the respondent is that she was living along with the petitioner even at the time of issuance of the said notice.

7. Be that as it may, as already observed, the suggestion given to R.W.4 would make it the case of the petitioner that the respondent joined him after issuance of legal notice dated 22.03.2004, thereby breaking the alleged two year period of desertion, which started from 08.01.2003. Hence, the petition fails on the ground of desertion.

8. As regards incurable unsoundness of mind of the respondent, there is absolutely no evidence adduced by the petitioner. Though in his evidence, the petitioner states that the

respondent is a mental patient even prior to the marriage and that the same was concealed by the parents of the respondent and that he could manage somehow and also wanted to cure the disease by getting proper medical treatment, he does not come forward with any supporting medical documents for the alleged medical treatment, which was given to the respondent, at his instance. Hence, without there being any supporting evidence for the contention of the petitioner that the respondent was of unsound mind cannot be accepted. Moreover, P.W.2, who is acquainted with the family of the petitioner and who attended the marriage of the petitioner and the respondent, does not anywhere state that the respondent was of unsound mind. He is a person, who participated in the deliberations. If really unsoundness was an issue, he is expected to know about it, since it would be certainly raised during deliberations. He states that he and the father-in-law of the respondent went and advised the respondent to follow, but there was no response. He does not state that the respondent had ever behaved in the manner indicating that she was of unsound mind. Hence, the petition filed on the ground of unsoundness of mind also.

9. The allegation of cruelty is based on the behaviour of the respondent, in which she removed Mangalasutram and threw at the petitioner and also in calling him an impotent and unfit person. The witnesses, who were examined on either side, supported the respective versions of the parties. The version of the respondent is that she never removed her Mangalasutram and never alleged impotency against the petitioner. She also

questioned as to how she can call the petitioner impotent, when they have a child out of the wedlock. As regards her removing Mangalasutram, she flatly denies the same, by stating that when she was always willing to join the petitioner, she would not venture to do such an act.

10. The chronology of the incidents, as can be seen from the evidence of P.W.1, is as follows:

The marriage was performed on 31.05.2002. They lived happily for 11 months and had one male child. There was a cradle ceremony in that regard. The petitioner and his parents attended the ceremony. After the ceremony, the parents of the petitioner asked the respondent to come to their house, but she and her parents refused. Thereafter, the petitioner went to the respondent and requested her to come to his house but she refused and further, started accusing him with illegal and false allegations, that he demanded dowry. She also filed a criminal case in the police station of Khilla Ghanpur, for the offence under Section 498-A IPC. The matter was enquired into and the case was closed, as it was found to be false. Subsequently, the respondent at the pressure of her parents again filed the complaint. Since then, the respondent deserted him.

11. The version of the respondent as R.W.1 is that after she begot the child, the petitioner and his family members started harassing her, demanding additional dowry. The petitioner got issued a legal notice on 22.03.2004. She lodged the complaint due to the harassment, in the month of December 2004, but the

petitioner and his parents approached the mediators and undertook that they will amicably live and will not harass her in future. As such, she accepted for continuation of marital life and kept quiet. But the petitioner had taken undue advantage of her goodness and created false story and filed the present case.

12. Whether the respondent leaving the house of the petitioner is because of her cruel attitude or because of the harassment meted by the petitioner and his family members is the point that has to be considered by us now.

13. The legal notice dated 29.03.2005 issued by the respondent is marked as Ex.P6. The said notice contains a request for the petitioner to take her and her child back within a week. She also alleges in the said notice that the petitioner neglected to provide maintenance for her food, clothes, medicines etc. and in spite of mediation by elders, he refused to maintain her. She also mentions that since 1 ½ years, the petitioner started harassing her by torturing her and finally, he has driven her out of the house along with the child of three months old. Hence, the said legal notice belies the contention of the petitioner that she was not willing to join him at any point of time. The legal notice issued by the petitioner dated 01.04.2005 is marked as Ex.P7 wherein he states that the respondent deserted him and having got disgusted with the behaviour of the respondent, he filed HMOP.No.16 of 2005 on the file of the Senior Civil Judge, Wanaparthi seeking for divorce. This notice seems to be a reply notice to the notice issued by the

respondent on 29.03.2005 seeking for maintenance, which is indicated by the recital therein, that the income of Rs.20,000/- shown is utterly false.

14. The admitted facts are that the parties are living separately since long time and thereafter, a complaint was filed by the respondent for the offence under Section 498-A IPC and the same was closed. Subsequently, the respondent again filed a case, which ended in conviction and the same was reversed in appeal. This act of the respondent of filing cases is termed to be a part of her cruel attitude. But the contention of the respondent is that she was forced to file cases, as she was harassed by the petitioner and his parents. The reasons for the closure of the first case are differently stated by both parties.

15. Whatever be the reason, from the conduct of the respondent requesting the petitioner to take her and her child back, it has to be noted that she had an intention to join him. As to how the petitioner responded to the notice issued by the respondent is not in evidence, as the petitioner did not file any reply notice issued to the said notice. He does not even speak about the notice issued by the respondent asking him to take her back. He, however, for the reasons best known, filed the said notice, which turns out to be an advantage to the respondent in proving her case.

16. We take note of the decisions relied upon by the counsel for the appellant.

The Supreme Court, in SAMAR GHOSH v. JAYA GHOSH¹ explained as to what constitutes mental cruelty and held that there cannot be any comprehensive definition on mental cruelty with which all kinds of cases of mental cruelty can be covered. Hence, the above decision does not help the petitioner.

The Supreme Court in K. SRINIVAS RAO v. D.A. DEEPA² held that filing of false complaints with indecent and defamatory statements would amount to mental cruelty. In this case, there is no evidence to show that any indecent and defamatory statements were made by the respondent in the complaints given by her. Mere filing of a criminal case cannot be termed as a cruel act, *moreso*, when it is admitted that the case filed by the respondent ended in conviction before the trial Court. The standard of proof in a criminal case being beyond reasonable doubt, the acquittal of the petitioner, in the appeal, on the benefit of doubt, cannot be a basis for holding that false complaint was given by the respondent and filing of a complaint cannot be construed as an act of cruelty.

The decision of the Chhattisgarh High Court in NEHA SOHIL SHARMA v. SOHIL RAMLUBHAYA SHARMA³ is also on the aspect of wife making false allegations against the husband regarding his mental condition, which is not the case here. On the other hand, it is the petitioner, who made such allegation.

¹ (2007) 4 SCC 511

² (2013) 5 SCC 226

³ 2018 (2) HLR 169 (CHH.)

The decision of the Supreme Court in MALATHI RAVI v. B.V. RAVI⁴ is also on the aspect of mental cruelty. The Supreme Court said that the ground of mental cruelty though is not taken in relief clause, if it is discernible from the undisputed material brought on record, it can be appreciated. The above decision absolutely has no relevance to the facts of the present case and the contentions made by the petitioner. He sought for the relief based on specific allegations, without leaving the burden of discerning, on the court.

The decision of the Supreme Court in K. RADHA RAJU v. K. SEETHARAMA RAJU⁵ is also on the aspect of cruelty. It was said that cruelty is not confined only to physical violence and it conceives mental cruelty as well. There is no quarrel with the said proposition, as the same is well settled. But it does not help the petitioner, as he fails to prove the mental cruelty.

17. The counsel for the respondent relied on a decision of the Supreme Court in NARAYAN GANESH DASTANE v. SUCHETA NARAYAN DASTANE⁶ in support of his contention that cruelty alleged against the respondent cannot be a ground, as the reunion of the parties, though for a short period, would amount to condonation of respondent's cruelty, which pertains to the period prior to the said act of condonation. The said principle is incorporated in section 23(1) (b) of the Hindu Marriage Act. The

⁴ (2014) 7 SCC 640

⁵ 2001 (6) ALT 350 (DB)

⁶ (1975) 3 SCR 967

supreme Court, in the cited ruling, made interesting observations as follows:

“Condonation of a matrimonial offence is not to be likened to a full presidential pardon under Article 72 of the Constitution which, once granted, wipes out the guilt beyond the possibility of revival. Condonation is always subject to the implied condition that the offending spouse will not commit a fresh matrimonial offence, either of the same variety as the one condoned or of any other variety. No matrimonial offence is erased by condonation. It is obscured but not obliterated. Since the condition of forgiveness is that no further matrimonial offence shall occur, it is not necessary that the fresh offence should be *ejusdem generis* with the original offence. Condoned cruelty can therefore be revived.”

18. The corollary of the above proposition would be that if after the act of condonation, no case of cruelty or any other ground of divorce is made out, the past cruelty has to be considered as condoned. It is on this corollary that the respondent's counsel places reliance. In this case all the acts of cruelty alleged against the respondent are prior to the alleged reunion of the spouses, except the allegation of desertion, which for the reasons already mentioned does not sustain. The allegations, which pertain to subsequent period, are held to be unfounded. Hence the grounds on which divorce is sought for, fail.

In the result, the civil miscellaneous appeal is dismissed.

As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

C. PRAVEEN KUMAR, J

T. RAJANI, J

August 7, 2018
DSK

