

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

CMA. No.252 of 2006

JUDGMENT: (Per Smt.Justice T.Rajani)

This appeal is filed against the order dated 02.02.2006 passed in HMOP. No.179 of 2003 by the Principal Senior Civil Judge, Tenali, on the grounds that the Court below erred in allowing the divorce petition filed by the respondent herein, husband; the Court ought to have seen that the husband and his mother harassed the appellant/wife herein, physically and mentally and necked out from the matrimonial home and demanded additional dowry; the Court ought to have seen that the appellant rejoined the respondent based on the directions passed by the Lok Adalat in HMOP. No.117 of 2002; and that the appellant categorically stated that she would like to live with her husband; the Court below ought to have seen that on 16.07.2003, in the night, the respondent came to the house in drunken stage and kicked the appellant miserably and demanded to get additional dowry; the Court below erred in holding that since the appellant filed criminal case under Section 498-A against the respondent and his mother and also filed maintenance to her and her son it indicates that she is not interested to live with the respondent; the Court below ought to have seen that filing of criminal case against her husband and maintenance case is not a cruelty against her husband; hence, sought to set aside the judgment of the Court below.

For the sake of convenience, the parties hereinafter are referred to as the wife and husband.

The husband filed a petition under Section 13(1)(ia) of Hindu Marriage Act against his wife, for divorce, alleging that their marriage was performed on 17.06.1994 as per the Hindu custom and then they were blessed with a son. He also made some allegations against the

family of his wife suspecting their fidelity. He also alleged that his wife deserted him without any just cause and put an end to their matrimonial life intentionally. Despite several efforts made by the husband, the wife did not turn up. The husband got admitted his son in Siddhardha Modern Public School at Kollipara and thereafter, the wife came to his house at the intervention of mediators and after one week she took away their son from the school, without the consent or knowledge of the husband. Then he filed HMOP. No.117 of 2002 against the wife for restitution of conjugal rights and the same was referred to Lok Adalat wherein the parties were directed to live together. As the wife did not abide by the directions of the Lok Adalat, the husband got issued legal notice for which she did not choose to respond. He also stated that based on the false allegations made by the wife, the Police arrested him and his mother and put them in jail for some days. Thus the wife caused physical and mental cruelty and therefore, there is no scope for their reunion and hence, he filed the divorce petition seeking dissolution of their marriage.

Denying the allegations made by the husband, the wife filed counter in the said O.P., *inter alia*, stating that there was a demand for additional dowry, for which she lodged a complaint before the Police and on enquiry, the Police registered a case in Crime No.51 of 2003 under Section 498-A IPC and took action in accordance with law.

Based on the rival contentions, the Court below framed the issue whether the husband is entitled to the relief of divorce for dissolution of marriage.

In support of the case of the husband P.Ws.1 to 4 were examined and Exs.P.1 to P.4 were marked and on behalf of the wife R.Ws.1 and 2 were examined and no documents were marked.

As could be seen from the order of the Court below, it is noticed that after taking into consideration the rival contentions of either party, the Court below came to the conclusion that filing criminal cases and keeping the husband and his mother in jail creates tension in the matrimonial life of the spouses, under which circumstances there is no possibility for the spouses to live together and to reunite. It is to be noted here that the evidence of P.W.1 is duly corroborated by the evidence of P.Ws.2 to 4, whose chief evidence is unshaken. On the other hand, the evidence of R.Ws.1 and 2 appears to be self-contradictory and an afterthought and the wife appears to have been developing the case stage by stage even ignoring the pleadings. Though there are several allegations that she was harassed physically and mentally she did not file any scrap of paper to prove the same. The intention of the wife that she is not willing to join the husband is clear from her attitude. It is also to be noted here that there is no specific averment either in the pleadings or in the evidence of the wife that she is ready and willing to join the husband. That itself shows the intention of the wife to disassociate with the husband.

Situation somewhat identical to the case on hand came up for consideration before a Division Bench of this Court in **KALAPATAPU LAKSHMI BHARATI v. KALAPATAPU SAI KUMAR**¹. In the said case, the parties had been living separately for 14 years and there was no possibility of them living together again. It was also a case where the marriage was irretrievably broken down. In view of the judgments of the Supreme Court in **SAMAR GHOSH v. JAYA GHOSH** [2007 (4) ALD 11 (SC)] and **KOHLI V. NEELU KOHLI** [(2006) 4 SCC 558] the Division Bench held that long time separation itself would lead to mental cruelty. It would be relevant to extract the relevant para of the aforesaid decisions as under:

¹ 2017 (1) ALD 272 (DB)

“11. 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 not possible 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.”

We feel that the case on hand is identical to the one referred to above and as the parties herein are living separately, except for the one week, as long as about 15 years. In view of the judgments of the Supreme Court, which was also followed by another Division Bench of this court in **KALAPATAPU LAKSHMI BHARATI's** case (1 supra), long separation for more than 18 years would lead to mental cruelty, irrespective of the finding of the Court below. It was also held by the Supreme Court that any effort made to force the parties to live together would tantamount to causing mental cruelty and would only prolong the mental agony of the parties. Hence, we feel that the parties herein are entitled to dissolution of marriage for the reason that there is no possibility for reunion of the parties in order to live together due to mental cruelty.

Hence, having regard to the observations made and the findings arrived at, we feel that the parties are entitled to a decree for dissolution of marriage and the marriage between the appellant and the respondent shall stand dissolved.

In the result, the civil miscellaneous appeal is allowed.
As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

JUSTICE C.PRAVEEN KUMAR

JUSTICE T.RAJANI

Date: 12.07.2018
LSK

