

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

CMANO. 459 of 2007

JUDGMENT: (Per Hon'ble Mr. Justice C. Praveen Kumar)

1. The present appeal came to be filed under Section 28 of the Hindu Marriage Act, 1955 assailing the order dated 11.10.2006 passed by the learned Senior Civil Judge, Mahabubnagar dismissing OP No. 57 of 2003 filed under Section 13 (1) (ia) (ib) of the Hindu Marriage Act for dissolution of marriage

2. The marriage between the appellant and the respondent took place on 19.5.1996 at Mahabubnagar as per Hindu rites and caste customs. Out of wedlock they were blessed with a child who is now major. Disputes arose between the parties which led to filing of a case in Cr.No. 208 of 1999 under Section 498-A IPC and Section 4 of Dowry Prohibition Act. After completion of investigation, the police filed a charge sheet which was taken on file as CC No. 227 of 2001. After a full fledged trial, the accused/appellant was acquitted of the said charges. The dissolution of marriage sought in the original petition was on the ground of cruelty, but no material was placed before the trial Court to show the same. For that reason, the trial Court dismissed the OP. Assailing the same, the present appeal came to be filed.

3. Pending the appeal, the appellant and the respondent filed a joint petition vide CMP No. (SR) No. 828 of 2018 along with affidavit of the husband stating that during the pendency of the appeal, the

appellant and the respondent have arrived at an amicable settlement before the family members and elders on 25.9.2007. A memorandum of compromise dated 25.9.2007 was filed vide CMP No. 2147 of 2007, is made part of the record. The contents of the said memorandum of compromise are as follows,

1. The first party and second party agreed to get the marriage between them shall be dissolved.
2. The second party agreed that she or her son shall not claim any maintenance or any claim on the properties of the first party at any time.
3. The second party agreed that she has no claim of whatsoever nature pursuant to the judgment in MC MC No. 39/2000 on the file of Judicial Magistrate of First Class, Mahabubnagar.
4. The second party agreed that she has no claim of any monthly maintenance or any claim on the retirement benefits of the first party.
5. The second party agreed that she has better income than the first party to maintain herself and her son and hence she shall not claim of monthly maintenance or permanent alimony against the first party.
6. That during the pendency of the appeal, the parties have arrived at amicable settlement and arrived at the aforesaid settlement out of their own free will and terms whereof are just and legal. The parties undertake to be bound by the terms of the compromise.”

4. Today the parties are present before the Court and they are identified by their respective counsel. They also filed Aadhar cards in proof of their identity. When examined, both of them stated that they are not interested in pursuing the matter and that the wife in particular states that divorce may be granted so that she can lead a happy life.

5. As both of them are living separately since 1999 and as there is no possibility of both of them joining together, it can be said without any hesitation that there is an irretrievable break down of marriage. Though it is not a ground for divorce under Section 13 of the Hindu Marriage Act, but in view of the judgment of a coordinate Bench of this Court reported in *S. Brahmanandam Vs. S. Rama Devi*¹ and having regard to the fact that both of them have compromised, we feel that it is a fit case where the marriage requires to be dissolved. Accordingly the appeal is allowed and the marriage between the parties is dissolved.

6. Miscellaneous applications, if any pending, shall stand closed.
No order as to costs.

Dt. 20.2.2018
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C.PRAVEEN KUMAR, J

J. UMA DEVI, J

¹ 2016 (6) ALT 790