

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR
AND
HON' BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Civil Miscellaneous Appeal No.367 of 2007

JUDGMENT: *(per Hon'ble Smt. Justice Kongara Vijaya Lakshmi)*

This Civil Miscellaneous Appeal is preferred against the order dated 21.11.2006 passed in HM OP No.121 of 2002 on the file of the II Additional District Judge, Guntur, wherein, the said OP filed under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, was dismissed.

2. The appellant is the petitioner-husband and the respondent is the respondent-wife before the trial Court. For the sake of convenience, the parties herein are referred to as the petitioner and respondent as arrayed in the trial Court.

3. The case of the petitioner, in brief, is as follows:

The marriage between the parties took place on 15.08.1990 at Narasaraopet of Guntur District; prior to the marriage, the petitioner was residing with his parents and two unmarried sisters at Visakhapatnam and the respondent was informed about the responsibility of the petitioner in performing the marriage of his two sisters; respondent agreed for the same; prior to the marriage, the father of the respondent told the parents of the petitioner that he had no capacity to offer dowry to the petitioner; the father of the petitioner gave Rs.50,000/- to the father of the respondent for purchase of jewellery; but quite contrary to her earlier consent, she started insisting the petitioner for a separate house, away from his parents and two unmarried sisters, for which the petitioner did not accept; she started questioning him whenever he purchases clothes etc either to his parents or to his unmarried sisters; that out of their wedlock, they were blessed

with a female child by name Swetha on 01.07.1991; when Swetha was four month old, the respondent joined the petitioner and started nagging the petitioner for separate family and also demanded the petitioner not to look after his parents and unmarried sisters; but the petitioner paid a deaf-ear to the demands of the respondent; the respondent started threatening the petitioner that she would file a criminal case against him, his parents and his unmarried sisters, if he performs the marriages of his sisters; and she would create evidence against the petitioner by addressing letters to her parents falsely alleging that she is subjected to harassment by the petitioner and her in-laws; the petitioner did not care for such threats and he performed the marriages of his two sisters on 18.03.1992 and on 09.08.1992 with his earnings; the respondent further threatened him that she would put an end to her life if he does not send away his parents forthwith; being afraid of the respondent, the parents of the petitioner had to leave Visakhapatnam on 21.10.1992 and went to Anakapalli; that the respondent conceived for the second time, but curiously, the respondent insisted on abortion for which the petitioner did not agree; enraged at this, she became very wild against the petitioner and started abusing him in filthy language; she used to take some medicines for abortion without proper consultation of doctor and finally she delivered a male child on 19.03.1993; it was a premature delivery during seventh month of pregnancy; the child was suffering from jaundice at the time of birth and was born handicapped; the respondent developed aversion towards the male; therefore, the petitioner had to request his parents to come and stay with him at Visakhapatnam; they came on 19.03.1999, and attending on the son; the respondent openly proclaimed that she is feeling shy to be the mother of physically handicapped son and so she

refused to look after her son; therefore, petitioner alone was attending on the treatment of his male child; the respondent used to say that her husband is a 'daridra' and son is 'garbadaridra' and father-in-law as 'neecha' and the mother-in-law as 'boorish woman'; that despite not looking after her son, the respondent took up a part time job in Pydah College in the month of August, 1993; thereafter, the respondent demanded the petitioner that she should be allowed to prosecute higher studies; on that the petitioner requested her to postpone the idea of prosecuting the higher studies in view of the ill-health of his son, more particularly, when he is physically handicapped; but the respondent openly stated that if her son is a hurdle for her to prosecute higher studies, she would not even hesitate to go to the extent of taking away the life of her 'garbadaridra' (her son) by closing his nose and mouth; that she also started proclaiming that she can conveniently implicate her husband and his family members in a false case; being afraid of such threats, petitioner gave consent to her to prosecute higher studies with his earnings; accordingly, the respondent completed M.Tech. during 1995-97; during that period she never attended to her household duties; the petitioner tried for a job to the respondent and she joined as a teaching assistant in Geetham College in the month of December, 1997; that in the year 1999, the respondent was promoted as Lecturer with salary of Rs.12,000/- per month; while so, the respondent went to her parents house on the occasion of her brother's marriage, had discussion with them, putting all ornaments, related to her and children with the parents and returned with a pre-plan and demanded the petitioner and in-laws to transfer the house in her name, which was purchased by the mother of the petitioner with her 'sreedhana property'; the respondent always suspected the petitioner that he is having illegal contacts with

some other ladies, who were attending the clinic for their treatment; the respondent demanded the petitioner to put up a separate house away from her in-laws and handicapped son, otherwise, threatened him with dire consequences; being afraid of such threats, the petitioner had to give consent to live separately; on 20.09.1999, after receiving phone call from the respondent, the parents of the respondent came to the house of the petitioner at VIDA Park, abused the petitioner in filthy language and warned him that they would implicate him in false cases and put all the luggage in front of petitioner's house and locked and took a separate house for rent at D.No.47-8-30, Srinagar, Visakhapatnam; respondent filed a false complaint before the Commissioner of Police and Mahila PS as well as in III Town PS, Visakhapatnam; in the absence of the petitioner, the respondent went to the newly taken house on 01.10.1999 and took away all the luggage with the help of her parents; on the next day, the petitioner went there along with some of his friends and requested the respondent to come and join them, but the respondent and her parents abused him in filthy language and refused to come and join the petitioner; the petitioner waited for some time thinking that there might be some change in the attitude of the respondent and he gave a legal notice to the respondent through his Advocate on 28.10.1999; the respondent received the notice and gave reply notice on 02.11.1999 with false allegations against the petitioner and also stating that she will take both civil and criminal action against the petitioner, who is a respectful doctor in Visakhapatnam; on receipt of the same, the petitioner sent a rejoinder reply notice on 15.11.1999 denying the allegations mentioned in the reply notice and requested her to join him; thereafter, with the influence of her parents, the respondent gave a false complaint on

20.11.1999 in III town PS, Visakhapatnam under Section 498-A of IPC; on 22.11.1999 the police arrested the petitioner and when the petitioner was in jail, the respondent came to the jail and insulted him; meanwhile police filed a charge sheet against the petitioner in CC No.43 of 2000 before the II Metropolitan Magistrate, Visakhapatnam; during the pendency of the case, the respondent resigned the job at Geetham College and took T.C. of her daughter Swetha, who was studying in Bathany School and went to Narasaraopet on 31.07.2000 and joined as a lecturer on 01.08.2000 at the college of Engineering, Narasaraopet with a salary of Rs.8000/- per month, much less than what she was drawing at Visakhapatnam; she left the physically handicapped son with the petitioner saying that she cannot see him, as evidenced in CC No.43 of 2000; while she was attending the criminal case along with her father, she went to the clinic of the petitioner and abused him in filthy language and warned him that she would see the end of the petitioner by implicating him in some false cases at Narasaraopet; ultimately, the case filed by the respondent ended in acquittal and the same was confirmed by the High Court on 21.09.2001; that the respondent filed MC No.26 of 2000 for the maintenance to the minor daughter Swetha before the I Additional Munsif Magistrate, Narasaraopet, alleging that the petitioner is habituated in drinking alcohol, playing cards and illegal contacts with some ladies and also earning Rs.1,00,000/- per month from practice; the Court ordered the petitioner to pay maintenance of Rs.400/- per month to his daughter; the respondent deserted the petitioner without reasonable cause from October, 1999; because of these cruel actions of the respondent, the petitioner has been put to a lot of mental agony; the respondent deserted the petitioner without reasonable cause since more than two years, there is a break down of

the marriage and there is no possibility of the petitioner and respondent living together any longer in future and hence, he prays to allow the divorce petition.

4. The respondent filed counter-affidavit, denying all the petition allegations; she stated that the father of the respondent paid Rs.1,50,000/- towards dowry to the petitioner, Rs.25,000/- towards adapaduchu katnam; they lived happily for some time and after the birth of a male child, who is physically handicapped on 19.03.1993, the petitioner brought his parents from Anakapalli for assistance to the respondent and to look after the infant child as the respondent by that time was an employee; actually disputes have arisen from then onwards, as the petitioner and his parents started shouting at the respondent in filthy language for nothing and they have been harassing the respondent on the ground that the respondent gave birth to a physically handicapped child; she bore the same thinking that everything will be alright, when the parents in law go to their village; but the parents in law did not leave Visakhapatnam and the disputes have enormously increased; the petitioner has totally neglected the respondent and children and used to visit the house once a week; that the respondent also came to know that during that period, the petitioner developed illicit contact with a woman by name Laxmi, who was running a beauty parlour and another woman by name Nagalaxmi, who is a divorcee; that the petitioner is still maintaining illicit relationship with Nagalaxmi and she has got two male children by name Sandeep and Dileep; the petitioner is looking after the children of Nagalaxmi; that in the MC No.26 of 2000 filed by the respondent on behalf of the minor daughter, the court granted maintenance of Rs.400/- per month; and as a counter-blast to that case, the petitioner filed MC No.44 of 2001 on the file of

the District Family Court, Visakhapatnam for maintenance to the physically handicapped boy against the respondent on the ground that she has been working as a lecturer and was earning salary; that the respondent is ready to join her husband for leading matrimonial life, in case the petitioner takes separate house elsewhere and ensure that she is not subjected to harassment by the petitioner and his parents and prays for dismissal of the petition.

5. In support of his case, the petitioner examined PWs.1 to 4 and marked Exs.A.1 to A.6. On behalf of the respondent, RWs.1 to 3 were examined and Exs.B.1 to B.3 were marked.

6. The trial Court framed the following points for consideration:

1. Whether the respondent voluntarily deserted the petitioner or left the petitioner's house due to harassment of the petitioner and his parents?
2. Whether the petitioner is entitled for decree of divorce dissolving his marriage with the respondent dated 15.08.1990 on the ground of cruelty and desertion?

7. The trial court after considering the evidence on record and after hearing both the sides, dismissed the petition filed by the petitioner. Aggrieved thereby, the present civil miscellaneous appeal came to be filed by petitioner-husband.

8. Heard the learned counsel for the appellant. Though the notice was served on the respondent, she did not choose to engage a counsel or appear in person. Perused the record.

9. Now, the point that arises for consideration in this appeal is, whether the order of the trial court is liable to be set aside?

10. Learned counsel for the appellant would contend that the trial Court failed to consider the fact that the respondent filed a criminal case in CC No.43 of 2000 against the petitioner and his parents for the offence under Section 498-A of IPC and on contest the same ended in acquittal on 12.02.2001, and that the respondent has not preferred any appeal against the said order of acquittal. He submits that she took a separate house on lease and started living separately, that it is clear that the respondent deserted the appellant for a continuous period of more than two years preceding the presentation of the petition, without any reasonable cause and without the consent of the appellant. He further contends that the trial court ought to have seen that various admissions made by the respondent during her cross examination established her cruel behaviour towards the appellant and his parents; He further contends that the trial court ought to have seen the attitude of the respondent in leaving her handicapped son with the appellant, and not visiting him would itself be sufficient to establish her cruel attitude towards the appellant.

11. PW.1 in the cross-examination admitted that he has received demand draft No.001317 dated 03.08.1990 for Rs.43,000/- drawn on Andhra Bank, Narasaraopet sent by the father of the respondent and encashed the same. He also admitted he has received Rs.7000/- under DD No.387079 and another sum of Rs.25,000/- under another DD, drawn on Andhra Bank in his name. He also admitted that he addressed a letter dated 01.06.1991 to his wife at Narasaraopet, wherein there is a mention that he is very grateful to his wife for informing his desires to her parents and agreed to fulfill them. He also admitted that there is no mention in Ex.A.1 and Ex.A.3 notices to the effect that RW.1 disliked his handicapped son and in that connection she abused the boy. He

admitted in his evidence that even if the respondent is ready to join, he is having his own objection and he is not inclined to continue his life with the respondent. His evidence further shows that he sent mediators to the respondent's house at Narasaraopet, but he has not examined any one, who went to the respondent's house at Narasaraopet.

12. PW.2 is the mother of the petitioner. She supported the petitioner's case. According to her evidence, the respondent deserted her son and that in spite of requests of the petitioner, the respondent refused to join the petitioner. In the cross-examination, she admitted that she did not visit the respondent and her grand daughter for the last three years. She also admitted that during the pregnancy of the respondent for the second time, she was suffering from jaundice. She denied the suggestion that they have not properly treated the respondent during the second time pregnancy as she was suffering from jaundice and because of this she delivered handicapped boy in her seventh month pregnancy. She admitted that she did not request the respondent to come and join the petitioner by vacating the rented house. She specifically stated that they are not willing to receive the respondent with her daughter and the respondent is residing with her parents at Narasaraopet since three years prior to her deposition.

13. PW.3 is an employee in the dispensary of the petitioner. Her evidence reveals that on one day, when she was in the clinic of the petitioner, the respondent came to the clinic along with the handicapped boy and she left the boy in the chamber of the petitioner. She further deposed that the respondent and her father along with a constable came to the clinic of the petitioner saying that the petitioner is in jail and she will close the clinic. In her cross-examination PW.3

admitted that she is working in the petitioner's clinic for the last 10 years. She also admitted that after the boy was left in the clinic of the petitioner, the respondent lived with the petitioner for about one month at Visakhapatnam and she does not know about the nature of the disputes between the petitioner and respondent.

14. PW.4 is the classmate of the petitioner. According to him due to the disputes between the petitioner and his parents, when the petitioner refused to put up separate evidence, the respondent took a rented house in Srinagar Colony, Visakhapatnam and put up separate residence with her parents. He further deposed that himself and his friend Kedar went to the respondent's house and asked her as to why she put up a separate residence from the petitioner. The respondent replied that she was not willing to join the petitioner and if necessary, the petitioner can come and join with her in her separate residence. He deposed that there is no fault on the part of the petitioner, but the respondent left the petitioner, without any reasonable cause. He denied the suggestion that PW.1 had illicit intimacy with one Nagalaxmi who is running Vennela Beauty Parlour in Visakhapatnam and another lady of Anakapalli.

15. The respondent as RW.1 reiterated the contents of the counter-affidavit in her chief examination. She stated that during her pregnancy, she suffered from jaundice and because of that she gave birth to a premature boy. She also stated that the petitioner did not take care of her and did not provide proper medicines and treatment. She stated that the petitioner neglected her and her children as he is having illicit contacts with a woman by name Laxmi, who was running a beauty parlour and another woman by name Nagalaxmi, who is working

as convent teacher and the petitioner was not taking care of her and her children. When she went to the Police Commissioner and reported the matter against them, petitioner agreed to set up a separate residence away from his parents and accordingly, they took a house on rent in Sinagar Colony and set up a separate residence there and the petitioner stayed there with them for only three days; she stated that lastly on 07.10.1999 petitioner came to the house and asked her, as to why she gave complaint to the police and refused to live with them; twenty days thereafter, he came and took away their son with him leaving the daughter with the respondent; thereafter she requested the petitioner for the custody of her son, but the petitioner refused for the same. She further stated that thereafter she came to her parents at Narasaraopet and secured job in Narasaraopet Engineering College. She stated that the petitioner filed MC No.44 of 2001 in Visakhapatnam court on behalf of their minor son claiming maintenance from her and the said case is still pending. She stated that the petitioner did not visit them when their minor daughter attained puberty. She further stated that the petitioner filed GW OP No.76 of 2001 claiming the custody of the minor daughter. She denied the suggestion that she voluntarily deserted the petitioner. She deposed that the petitioner filed the present OP, as she filed a criminal case against the petitioner and his parents. She categorically admitted that she is ready and willing to join the petitioner and to continue her life with the petitioner, if the petitioner changes his attitude and behaviour towards her and her children. She denied the suggestion that she is living separately since the year 1999. She further stated that she can produce the documentary evidence to show that the petitioner is having illicit contacts with other ladies and children through him. She admits that she received the original of Ex.A.1 notice from the

petitioner wherein the petitioner called her to join him in the matrimonial home along with his parents. She gave a reply stating that the petitioner should come and join her in the separate residence which was taken on rent by him.

16. RW.2 is the sister of the respondent and she supported the case of the petitioner. RW.3 is the Principal of Tiny Tots Public School, Dwarakanagar, Visakhapatnam. He was examined to show that the petitioner admitted the sons of the said Nagalaxmi by name Sandeep and Dileep in his school. He stated that the school used to maintain admission register for all the students, who are admitted in the school and they used to destroy the admission register, after giving certificates to the students as they are not required subsequently. He categorically stated that he has not brought any record mentioned in the summons as they are not available with their school. It is relevant to note that at that stage, learned counsel for the respondent requested the court to treat the said witness as hostile and sought permission to cross-examine him. In the cross-examination, RW.3 stated that his school is not registered with D.E.O., for the last 26 years; there are 47, 10th class students in their school. He also stated that there are 800 students in the school, but they don't have the record of the student, who left their school. He denied the suggestion that the entire records from the date of starting of the school are very much available with them and that they are intentionally suppressing the same. He admitted that his wife is the owner of the school and he is the Principal cum Director of the school. He also admitted that he is running the school unauthorizedly for the last 26 years without permission from the government and without applying for permission. He denied the suggestion that he is giving false

evidence at the instance of the petitioner, who is the father of the student of their school and who is a practicing doctor in their area.

17. Admittedly, to prove the desertion and cruelty on the part of the respondent, the petitioner has not examined any independent witness. The evidence of PW.2 who is the mother of the petitioner, PW.3 an employee in the clinic of the petitioner and PW.4 a friend of the petitioner, show that there were disputes between the petitioner and respondent. But their evidence cannot be believed as they are interested witnesses. As seen from the record and the evidence adduced by both parties, the petitioner has not proved the alleged cruelty on the part of the respondent. Further, the petitioner has not examined the neighbours or the owner of the house where the respondent and petitioner lived for some time to prove that the respondent treated the petitioner with cruelty. The evidence let in by the petitioner to substantiate the cruelty is not sufficient to come to a conclusion that the respondent acted cruelty with the petitioner. Admittedly, the respondent filed a criminal case against the petitioner for the offence under Section 498-A of IPC and it ended in acquittal. Mere filing of a criminal case against the petitioner under Section 498-A of IPC, cannot be said to be cruelty.

18. A Division Bench of this Court in '*Chiranjeevi vs. Lavanya*¹' held as follows:

“Much arguments have been advanced by the learned Counsel appearing for the appellant-husband that the acquittal of the appellant-husband and his parents in a criminal case on a full fledged trial is an incident which constitutes cruelty on the part of the respondent-wife who initiated criminal proceedings. We have gone through the judgment, which has been marked as

¹ AIR 2006 AP 269 (DB)

Ex.B-6. The criminal case ended in acquittal on the ground that the prosecution failed to prove the case against the accused beyond all reasonable doubt. The acquittal of the case is not on the ground of no evidence. It is settled law that nature of evidence required in a criminal case is of different standard and the same standard and proof is not required in civil proceedings. Therefore, mere acquittal of the appellant-husband and his parents in criminal case cannot be treated as instance which goes in favour of the appellant-accused to substantiate the plea of cruelty, on which a decree of divorce has been sought for.”

19. Admittedly, the said case was filed when the respondent was residing at Visakhapatnam and not at the house of her parents at Narasaraopet. Further, the petitioner has not examined any mediator sent by him to Narasaraopet, as alleged by him, to pacify the differences between the petitioner and respondent. The respondent stated that the petitioner is having illicit contacts with one Nagalaxmi and the petitioner is looking after the welfare of the said Nagalaxmi and her two sons, by name Sandeep and Dileep and he joined them in the school of RW.3 wherein, the name of the petitioner was shown as father of the said children. Though, the respondent examined RW.3 to prove that the petitioner himself joined the children of Nagalaxmi in his school, RW.3 did not support the case of the respondent. RW.3 treated hostile and admitted that he did not come to the Court with records. His evidence on the face of it shows that he was trying to help out the petitioner. This is very clear from the fact that, when he is running a school with 800 children, he says that he does not have recognition for the school and that they do not have the record of the student, who leaves the school.

20. The petitioner issued notice Ex.A.1 calling upon the respondent to come and join him. The respondent also gave reply stating that she is willing to live with the petitioner in a separate residence

which was taken by the petitioner. Respondent also in her evidence, categorically admitted that she is ready and willing to join the petitioner, if the petitioner changes his attitude and behaviour towards her and her children and maintain them with love and affection. Therefore, it cannot be said that the respondent has withdrawn from the society of the petitioner, without reasonable cause. The petitioner has not examined any independent witnesses except his family members and friend to prove that respondent deserted him without any reasonable and justifiable cause.

21. Though the husband sought for divorce on the ground of desertion on the part of his wife, the wife has got reasonable excuse and sufficient cause for not joining the petitioner. Even after receipt of the reply to Ex.A.1 from the respondent, the petitioner has not filed any petition before the Court for restitution of conjugal life. Thereafter, he waited for two years and later filed the present petition for divorce on the ground of cruelty and desertion. If really, he is interested to live with the respondent, he ought to have filed a petition for restitution of conjugal rights. Admittedly, the petitioner has not filed any petition for restitution of conjugal rights. But he filed the present petition after completion of two years. Further, in the cross-examination, petitioner admitted that even if the respondent is ready to join him, he is having his own objection and he is not inclined to continue his life with the respondent. PW.2, mother of the petitioner also admitted in her cross-examination that they are not willing to receive the respondent along with her daughter. Thus the evidence of PWs.1 and 2 coupled with the evidence of RWs.1 and RW.3 show that there is no desertion on the part of the respondent.

22. On scrutiny of the evidence of both sides available on record, it shows that the petitioner neglected the respondent, even though there is no intention on the part of the respondent to put an end to marital life with the petitioner and she is always ready and willing to join the petitioner, if he changes his attitude and behaviour towards her and her children. As stated above, PWs.1 and 2 have categorically admitted in the cross-examination that they are not willing to receive the respondent even if she is willing to join the petitioner. Hence, the petitioner has no *bona-fides* to ask for divorce even though he issued Ex.A.1 notice to the respondent calling upon her to join with him. In view of the above discussion, we find that the husband-petitioner has failed prove both the grounds of cruelty and desertion, for granting decree of divorce.

23. For the reasons stated above, we do not find any valid reason to interfere with the findings of the trial Court and the trial court has rightly dismissed the petition for divorce and there is no merit in the appeal.

24. In the result, the civil miscellaneous appeal fails and is, accordingly, dismissed. No order as to costs. Miscellaneous petitions, pending if any in this appeal, shall stand closed.

C.PRAVEEN KUMAR, J

KONGARA VIJAYALAKSHMI, J

Date: 27.07.2018
BSS

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR
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Civil Miscellaneous Appeal No.367 of 2007
(per Hon'ble Smt. Justice Kongara Vijayalakshmi)



Date: 27.07.2018

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