

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

CMA NO. 958 of 2006

JUDGMENT: (Per Hon'ble Ms. Justice J. Uma Devi)

1. Having been aggrieved by the order dated 28.7.2006 passed in O.P.No. 20 of 2004 on the file of the Senior Civil Judge, Adilabad, the present appeal is filed by Smt. Akula Padma, the wife of the respondent herein.

2. The parties will hereinafter be referred to as 'petitioner' and 'respondent' as they are arrayed in O.P.No. 20 of 2014.

3. The petitioner-husband filed a petition for dissolution of marriage before the court below under Section 13 (i) (ia) of the Hindu Marriage Act on the ground of cruelty. It is contended by the petitioner that his marriage with the respondent was performed on 16.3.2000 at Pragathi Vidyalayam, Shanthinagar, Adilabad according to their caste customs prevailing in their community and that the marriage was consummated. After the marriage, the petitioner shifted his residence to Balajinagar, Hyderabad and there both himself and the respondent stayed happily for a period of six months. Thereafter she started visiting Adilabad frequently to stay with her parents and sister. When the petitioner advised her not to go to her parents' house, she threatened that she would commit suicide by consuming poison or by hanging; twice she attempted to commit suicide by hanging. As such, the petitioner allowed her to act according to her wish to save

himself from the legal consequences. The respondent used to quarrel with him and subjected him to physical and mental cruelty. The respondent stayed away from the petitioner for one year, and thereafter she joined him at Hyderabad at the pressure of her parents, and hardly stayed with him for three months and again repeated the same acts of cruelty. Respondent's brother-in-law who was a police constable, was very unfair towards this petitioner. During her stay at Sangvi village at the house of her parents, she filed two criminal cases; one at Bela police station, and another at Adilabad-I Town police station with the intention of harassing him. The police of Bela also filed a charge sheet against him. The junior paternal uncle of the respondent by name J. Rukma Reddy who was working as police constable was on inimical terms with the petitioner. Having fed up with the attitude of the respondent, he filed the petition seeking decree of divorce by dissolving his marriage with her.

4. Denying the allegations made in the petition, an elaborate counter was filed by the respondent-wife. According to her contention, there was harassment on her by the petitioner to bring additional dowry of Rs.50,000/-, and she was forced to give her consent for his second marriage; as she did not agree for the second marriage of the petitioner, she was beaten and was harassed physically and mentally whilst her stay with him at Hyderabad. Having not been able to bear the harassment meted out to her in the hands of the petitioner, once she attempted to commit suicide by consuming

poison, and she was provided with treatment by her husband through an RMP doctor and she was asked not to disclose the said fact to anybody. She further alleged that when she went to meet her sister in the house of her friend Soumya, the petitioner came there suddenly and took her to his house and beat her mercilessly. When the petitioner was questioned by her father who came there on seeing her with injuries, he replied that he has got the right of beating his wife, and by saying so, he dragged her father to the road and warned him not to come again to his house. The aforementioned circumstances compelled her to lodge a complaint before the police of Adilabad- I Town and that the police summoned him to appear for counseling before the Deputy Superintendent of Police, Adilabad on 24.8.2003. But the petitoenr did not choose to appear before the Deputy Superintendent of Police for counseling, and that prior to the date on which he was asked to appear before the Deputy Superintendent of Police, he came to Sangvi village and beat the respondent for giving a report against him to the police. She lodged a complaint against the petitoenr in the police station at Bela, and that the police filed a charge sheet against him under Section 498-A IPC after investigating the case. While the case was under investigation, she was asked to withdraw the case. Believing the words of the petitioner, she joined him and stayed with him for a period of three months. The petitioner filed a petition for divorce against her and she was told by the petitioner that there was no need of her appearing in the case, as he

did not want get the decree of divorce, no steps were taken by her to enter appearance through a counsel since it was thought by her that the disputes between her and the petitioner ended in compromise, as such she failed to persuade the divorce case filed by her husband. Under the aforementioned circumstances, an ex parte decree of divorce was passed against her. She further asserted that her brother-in-law by name Kistanna had no knowledge about the disputes between her and the petitioner and that her uncle by name Rukma Reddy never intimidated him. With the aforementioned assertions, the divorce case filed against her by the petitioner was resisted.

5. The petitioner-husband, in support of his assertions, got examined himself as P.W.1. The respondent-wife, apart from examining herself as R.W.1, examined her father-Sri Jabu Ashanna as R.W.2 and the elder for her marriage as R.W.3. The learned trial Judge, on appreciation of the oral evidence adduced by both the parties, ordered for dissolution of the marriage between the parties and granted decree of divorce in favour of the petitioner. Aggrieved thereby, the respondent-wife filed the present appeal.

6. The contention of the respondent-wife was that though no substantial evidence was placed on record by her husband establishing the ground of 'cruelty', the Court below came to the conclusion that, the petitioner could prove that he was subjected to harassment. The said finding of the lower court was contrary to the established proposition of law that mere filing of criminal case would not be a

ground for divorce. The learned trial Judge misread the legal proposition laid down in the case of *Gajjala Shankar Vs. Anuradha*<sup>1</sup> and ordered for dissolution of marriage of the respondent with the petitioner. Though the petitioner failed to substantiate his contentions that he was subjected to ill-treatment by adducing evidence, the trial Court, instead of dismissing his application filed for divorce, passed the decree of divorce relying on his solitary testimony. The learned trial Judge failed to notice that the respondent is willing to live with the petitioner and that she has not been living away from him on her own volition. As she has been sent out of her matrimonial home, she is taking shelter in her parent's house. Filing of maintenance case against the petitioner cannot be a ground to order for dissolution of her marriage.

7. Opposing the aforementioned contentions of the respondent-wife, the learned counsel for the petitioner-husband contended that the petitioner was confined in jail for some period because of filing of criminal cases against him by the respondent. The respondent filed as many as five criminal cases and one maintenance case as against the petitioner and that the respondent hardly lived for a period of 1 ½ years with him in Hyderabad, and during the period of her stay with him he was forced to keep his property in her name. Twice she attempted to commit suicide. She filed several criminal cases against him. It was only when he sent a petition to the DIG against Deputy

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<sup>1</sup> 2005 (6) ALT 565 (DB)

Superintendent of Police and other police officials, filing of cases against him was stopped. During the period of his stay with the respondent he was not happy and was ill-treated. The unusual conduct and attitude of the respondent towards him compelled him to seek divorce from her.

8. We have perused the order dated 28.7.2006 passed by the learned Senior Civil Judge, Adilabad in OP No. 20 of 2004 so also the pleadings and the oral and documentary evidence available before us.

9. The fact that the marriage of the petitioner with the respondent was performed on 16.3.2000, is not in dispute and such a fact was affirmed by the respondent in her affidavit filed in lieu of chief-examination, though she gave different date in her counter. It is understood from the evidence on record that that the parties are living away from each other from 18.8.2003 onwards. Filing of criminal cases by the respondent against the petitioner in the month of August, 2003 with the police of Adilabad I-Town and Bela police stations is admitted by her. She also has not denied filing of maintenance case against the petitioner. It is also understood from the evidence of R.W.1 that she lived with the petitioner at Hyderabad for a period of 1 ½ years and during that period she did not maintain cordial terms with him.

10. The father of the respondent-R.W.2 deposed that he took his daughter (respondent) to his house as disputes started between her and the petitioner. He also deposed that the respondent stayed with the

petitioner also for a period of 1½ years at Hyderabad and subsequently for a period of three months whilst his stay at Adilabad. Filing of six cases by the respondent against the petitioner was admitted by R.W.2 also, and that he filed a criminal case against the petitioner alleging the offences of cheating, theft etc. He admitted that the petitioner was in jail for some period because of filing of criminal cases against him by the respondent.

11. From the aforementioned evidence of P.W.2, it is manifestly clear that the respondent and the petitioner lived together only for a period of 21 months and in these 21 months period they did not maintain cordial terms and that the respondent filed several criminal cases against the petitioner. She lodged a criminal complaint in Adilabad I-Town police station against the petitioner and his mother alleging that she was ill-treated by them. The petitioner was convicted for the offence under Section 498-A IPC, though his mother was acquitted of the said offence. When his conviction under Section 498-A IPC was challenged before the Court of I-Adl. Sessions Judge, Adilabad vide Crl.A.No. 91 of 2006, and the conviction and sentence passed against him by the trial Court was confirmed and the appeal filed by him was dismissed. It was not only the respondent, but her father also filed a criminal case against the petitioner alleging the offence under Section 379 IPC.

12. The respondent dragged the petitioner and his mother to the court; the petitioner was convicted by criminal Court; and that an

application for maintenance was filed by her against him and he was directed to pay maintenance. Filing of several criminal cases against him, made him to run from pillar to post. It was only after the submission of report or complaint to Deputy Superintendent of Police by him, she stopped filing of criminal cases against him. All the abovementioned circumstances would indicate that continuation of marital relationship between the couple is not possible. His reputation in the society due to filing of criminal cases against him and passing of judgment of conviction against him by the criminal court of law for the offence under Section 498-A IPC is badly affected. All these circumstances have made him to file a petition for divorce as against the respondent.

13. The couple are living away each other for the past 15 years after filing of the appeal by the respondent against the orders of divorce passed by the trial Court. As the petitioner and the respondent got two daughters out of their wedlock and as the learned counsel for the respondent made a submission that the respondent intended to lead marital life with the petitioner in the interest of her daughters, as a matter of fact, this Court made an effort to reunite the parties by referring their case to Lok Adalat, but neither of them made appearance. If really the respondent has got the intention of maintaining cordial relationship with the petitioner, she would not have filed several criminal cases against him.

14. In *Gajjala Shankar Vs. Anuradha* (1<sup>st</sup> supra) a Division Bench of this Court has taken the view that the wife had filed a criminal case against the husband and her in-laws, which was held to be not proved by the criminal Court and also filed a case for maintenance, which appeared to have been granted. These two facts basically prove the strong desire of the wife to be disassociated with the husband and the matrimonial home as a whole and these two circumstances would indicate that she had no real intention to lead happy marital life with the husband. The Division Bench placed reliance on a decision rendered by another Division Bench reported in *Anagalla Padmalatha Vs. A. Sudershan Rao* <sup>2</sup> before making the aforementioned observation.

15. In the given case a complaint was lodged by the respondent against her husband and his mother and the prosecution was launched against them at her instance. It is not as though that a complaint filed against the petitioner was kept pending, and he was acquitted. The injurious accusations of a spouse certainly will have their own impact on the personal life and conduct of the other spouse. The incidents such as the quarrels between the spouses must be weighed before coming to a conclusion whether there exists any chance of continuing of marital relationship between the couple.

16. The appellant/respondent was aged about 25 years when an application for divorce was filed against her. She is living away from

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<sup>2</sup> 2000 (2) ALT 15 (DB)

her husband along with her children from 2003 onwards. No effort to resolve the disputes between the petitioner and the respondent was made either by her father or by any of her relatives. On the other hand, her father himself lodged a complaint against the petitioner alleging the offence under Section 379 IPC. The children of the petitioner are living away from their father since a long time may be for the past 15 years. In these 15 years of period at no point of time the respondent had taken the children to his house nor sent them to his house through any of her well wishers. If really she had the intention to join the petitioner in the interest of their children, she would have taken all possible steps to settle the differences through mediators. No steps to unite the children with their father are made by her. Instead of making any efforts to maintain harmonious relationship with her husband, she appears to have lodged several complaints. Her father too has lodged a complaint against the petitioner and all these circumstances are enough to say that she had no intention to live with him.

17. It is evident from the material on record the respondent seems to have estranged her relationship with her husband intentionally by filing a maintenance case and six criminal cases as against the petitioner (as deposed by P.W.2).

18. Compatibility between the couple and maintaining of mutual understanding plays a paramount role for sustainability of marital relationship between the couple, but it is lacking in the present case.

19. Because of failure of the respondent to maintain cordial relationship with her husband and taking the extreme step of filing of criminal complaint due to which he was prosecuted and convicted and severed his contact with her. We do not think that the petitioner, who has been convicted on the complaint given by the respondent and is ordered to pay maintenance, may come forward to take her back to his matrimonial house. Even if any attempt is made to unite them, the same may not give any result, as the differences have reached the stage beyond ones capacity to resolve them. As the marital tie between the couple has broken down irretrievably about more than a decade, the possibility of their reunion may be a myth.

20. Merely because of a submission made by the learned counsel for the respondent that the wife is willing to live with her husband, the decree of divorce granted by the trial Court cannot be annulled as this Court is convinced beyond any doubt that there exists no chance of survival of marriage as it has been broken down irretrievably. Even after the impugned decree of divorce is set aside, there exists no chance of their staying together to lead happy marital life as the petitioner is not willing to take her back to the matrimonial home. Therefore, we find that it is a fit case where a decree of divorce granted by the trial Court can be upheld.

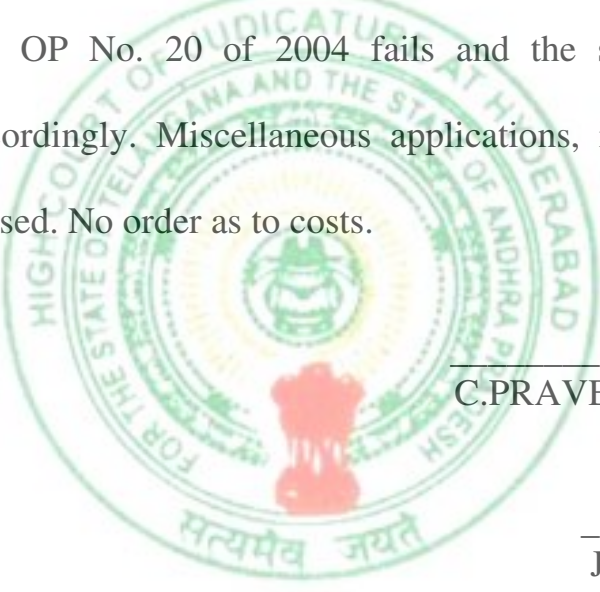
21. The trial Court, taking into consideration of the fact that she lodged a complaint against the petitioner under Section 498-A IPC which resulted in his conviction, came to the opinion that there exists

no compatibility and mutual tolerance between the couple and accordingly ordered for dissolution of the marriage of the petitioner with the respondent by allowing the application filed by her husband for divorce. There is no flaw in the order passed by the learned Senior Civil Judge, Adilabad granting decree of divorce in favour of the petitioner (respondent herein).

22. The order under appeal deserves to be confirmed in the light of our abovementioned discussion.

23. In the result, the Civil Miscellaneous Appeal filed by the respondent in OP No. 20 of 2004 fails and the same is hereby dismissed accordingly. Miscellaneous applications, if any pending, shall stand closed. No order as to costs.

Dt.14.9.2018  
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C.PRAVEEN KUMAR, J

J. UMA DEVI, J