

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SMT JUSTICE T. RAJANI

CIVIL MISCELLANEOUS APPEAL No.918 of 2005

JUDGMENT: (per Hon'ble Sri Justice C. Praveen Kumar)

Assailing the common order in OP.Nos.11 and 45 of 2001 dated 11.08.2005 on the file of the I Additional Senior Civil Judge, Kakinada, wherein OP.No.45 of 2001 filed for divorce was allowed, the present appeal is preferred under Section 28 of the Act by the appellant/respondent.

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/husband in OP.No.45 of 2001 filed in the Court below, are briefly as follows:

The petitioner married the respondent on 01.06.1997 at Kakinada as per Hindu rites and customs. After the marriage, the respondent joined the petitioner at his place in Yanam for leading a marital life. It is said that she stayed only for 9 days and thereafter, her brother came there and brought her back to her house at Kakinada for Ashada Masam. Thereafter, the respondent was brought to the petitioner's house where it was discovered that the respondent was suffering with skin disease, having white and red patches all over the body, which fact was not brought to the notice of the petitioner or his parents at the time of marriage. It is said that the petitioner was afraid that the said disease may be hereditary and the children born through of the respondent would also get the said disease. However, the

parents of the respondent obtained a certificate from the doctor, to the effect that she is not suffering from leprosy but the disease was only a skin disease. Since the same was not cured, the respondent was staying with her parents at Kakinada since 10.06.1997. It is said that there was no resumption of co-habitation between the petitioner and the respondent since 10.06.1997. In view of the above, the respondent started creating stories as if the petitioner demanded Rs.2 lakhs dowry and a Hero Honda motor cycle as a condition for taking her back into the marital fold. She also filed a criminal case in CC.No.377 of 1998 under Section 498-A read with 34 IPC. On account of the criminal case, the father of the petitioner suffered severe depression due to his arrest and ultimately, died of the same. The respondent also filed MC.No.35 of 1998 seeking maintenance and obtained an order of maintenance of Rs.500/- per month. After the judgment in the criminal case, respondent filed OP.No.11.2001 for restitution of conjugal rights with false allegations. Thereafter, the present petition came to be filed.

A counter came to be filed denying the allegations made in the petition except admitting marriage. It is said that sometime after the marriage, the petitioner developed undue aversion and hatredness against the respondent, for no fault of her. It is said that the petitioner raised a demand to get money from her parents and whenever the respondent expressed her inability to get the amount, she was subjected to lot of physical harassment. It is said that petitioner kept the respondent out of conjugal life and drove her out of the family house when the respondent failed to meet the illegal and unlawful

demand for additional dowry. It is said that the respondent is ready and willing to join the petitioner but for reasons best known, the petitioner is evading to take her back. Hence, pleads that there are no valid ground for grant of divorce as prayed by the petitioner.

In support of the above, the petitioner/husband examined P.Ws.1 to 3 while the respondent/wife examined R.Ws.1 to 3 and got marked Ex.B1. Considering the oral and documentary evidence, the OP was allowed granting divorce. Challenging the same, the present appeal came to be preferred.

3. As per the evidence of P.Ws.1 to 3, the marriage between the petitioner and the respondent took place on 01.06.1997 at Kakinada. It is said that at the request of the respondent, the marriage was solemnized near the parent's house of the respondent. After marriage, the respondent was taken to the house of the petitioner to lead a marital life. At that time, P.W.1 noticed that the respondent was suffering with severe skin disease and 9 days thereafter, Ashadamasam intervened and the respondent left the company of the petitioner. The evidence of P.Ws.1 and 2 would show that they advised the respondent and her brother to give proper treatment to the skin disease. On the other hand, the evidence of R.Ws.1 to 3 would show that after marriage, the petitioner and the respondent lived for a period of one month at Kakinada and thereafter, she was taken to their joint family house to lead a marital life. Their evidence shows that both of the lived sfor a period of four months at Yanam and during that period, the family members of the petitioner harassed the respondent physically and mentally and also demanded additional

dowry. The fact of giving dowry of Rs.70,116/- and 7 sovereigns of gold to the petitioner besides another sum of Rs.5,000/- towards Adapaduchu lanchanams was spoken to by R.Ws.1 to 3.

4. As stated earlier, the evidence of P.Ws.1 to 3 is consistent with regard to skin disease with which the respondent was suffering and since the said disease is communicable to the petitioner and his children, he requested the respondent to obtain proper treatment. With that advice, she was sent to Kakinada to her parents house along with her brother. Ex.B1, an inland letter, addressed by P.W.1 to R.W.1, showing that both of them lived together only for a period of 9 days and the evidence of P.Ws.1 to 3 indicate that there was no co-habitation between the petitioner and the respondent after 10.06.1997. Even as per the evidence of R.W.1, since December 1997, she was living at Kakinada without any contact with the petitioner. A dispute was also raised before a local MLA but the petitioner refused to hear the advice of the same. The evidence of P.W.1 further shows that the respondent initiated criminal case for the offence punishable under Section 498-A IPC and MC.No.35 of 1998 claiming maintenance of Rs.500/-. In the criminal case, the parents of the petitioner were arrested, which lead to depression and mental agony leading to death of the father of the petitioner. The petitioner stated that all the above circumstances lead to the parties living separately.

5. It has to be noted here that in the criminal case, which has been filed in CC.No.379 of 1998 on the file of the IV Additional Judicial First Class Magistrate, Kakinada for the offence punishable under Section 498-A IPC, the petitioner and his mother were convicted but on appeal

against the said conviction, they were acquitted. MC.No.35 of 1998 filed by the respondent-wife was allowed awarding maintenance of Rs.500/- per month. From the above, it can be inferred that the respondent was not interested in leading matrimonial life with the petitioner.

6. As seen from the evidence of P.W.1 and Ex.B1, the petitioner and the respondent have lived together only for nine days after 01.06.1997 and since then, they have been living separately. In spite of best efforts made by the petitioner requesting the respondent to join him, after getting the skin disease cured, did not yield any fruitful result. Further, it has also to be noted here that the petition filed by the respondent for restitution of conjugal rights was rejected and no effort was made by her to challenge the same, which also makes it clear that the respondent-wife is not willing to lead matrimonial life with the petitioner.

7. On the aspect of long separation itself leading to mental cruelty, a Division Bench of this Court in *KALAPATAPU LAKSHMI BHARATI v. KALAPATAPU SAI KUMAR*¹ following 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] held that long time separation itself would lead to mental cruelty. It would be relevant to extract the relevant para of the aforesaid decision as under:

“11. In the light of the undisputed fact that the parties have been living separately for nearly 14 years, there may be no

¹ 2017 (1) ALD 272 (DB)

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.”

8. The Supreme Court in *K. SRINIVAS RAO v. A. DEEPA*² also held as under:

“9. The High Court has taken a view that since the appellant-husband and the respondent-wife did not stay together, there is no question of their causing cruelty to each other. The High Court concluded that the conclusion drawn by the Family Court that the respondent-wife caused mental cruelty to the appellant-husband is erroneous. We are unable to agree with the High Court.

10. Under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, a marriage can be dissolved by a decree of divorce on a petition presented either by the husband or the wife on the ground that the other party has, after solemnization of the marriage, treated the petitioner with cruelty. In a series of judgments this Court has repeatedly stated the meaning and outlined the scope of the term ‘cruelty’. Cruelty is evident where one spouse has so treated the other and manifested such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental.

11. In *Samar Ghosh* [2007 (4) ALD 11 (SC)] this Court set out illustrative cases where inference of ‘mental cruelty’ can be drawn. This list is obviously not exhaustive because each case

² (2013) 5 SCC 226

presents its own peculiar factual matrix and existence or otherwise of mental cruelty will have to be judged after applying mind to it. We must quote the relevant paragraph of *Samar Ghosh*. We have reproduced only the instances which are relevant to the present case ...”

...

24. In our opinion, the High Court wrongly held that because the appellant-husband and the respondent-wife did not stay together there is no question of the parties causing cruelty to each other. Staying together under the same roof is not a pre-condition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case, while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouse's life miserable. This is what has happened in this case.

26. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the [Hindu Marriage Act](#), 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree.

9. We feel that the case on hand is identical to the cases referred to above. Admittedly both parties are living separately since 1997 and cases came to be filed against the petitioner and his family members, which ended in acquittal. In view of the judgments of the Supreme Court, which was 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 appellant is entitled to dissolution of marriage for the reason that there is no possibility of reunion for the parties in order to live together due to mental cruelty.

10. For the aforesaid reasons, we feel that the order of the Court below warrants no interference.

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

July 12, 2018
DSKs