

High Court for the State of Telangana

The Hon'ble Sri Justice Raghvendra Singh Chauhan

and

The Hon'ble Sri Justice T.Amarnath Goud

F.C.A. No.249 of 2008

Date: 19-03-2019

Between:

S. Michael Johnson

...Appellant

and

Smt. M. Nirmala

...Respondent

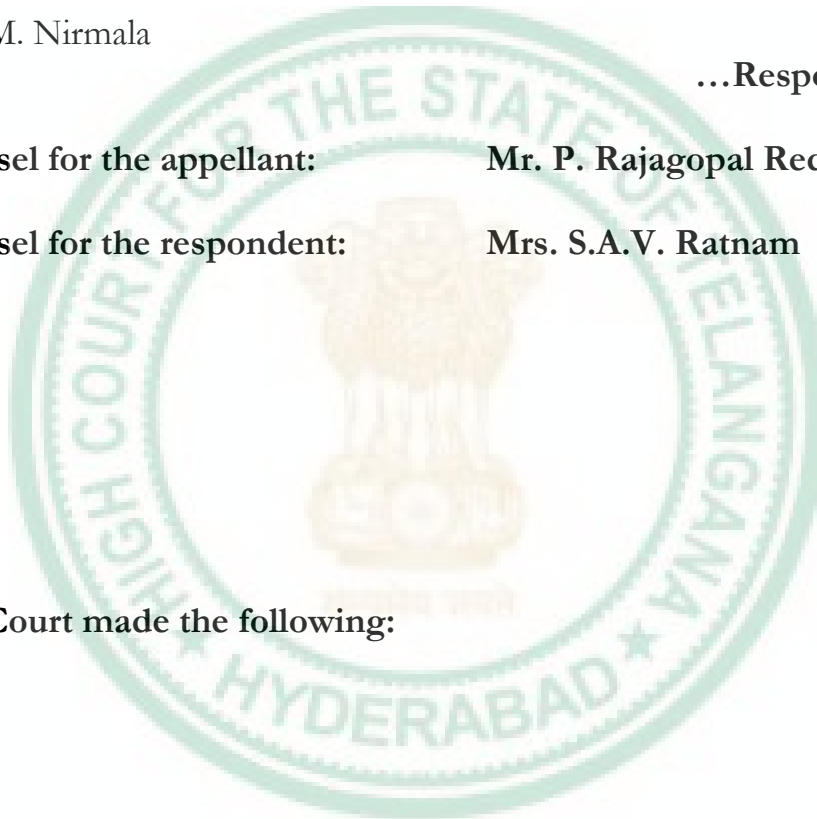
Counsel for the appellant:

Mr. P. Rajagopal Reddy

Counsel for the respondent:

Mrs. S.A.V. Ratnam

The Court made the following:



Judgment: (per Hon'ble Sri Justice Raghvendra Singh Chauhan)

Mr. S. Michael Johnson, the appellant, is aggrieved by the judgment and decree dated 11-08-2008, whereby the learned Judge, Family Court, Secunderabad, has allowed the petition, namely F.C.O.P.No.322 of 2007, filed by the respondent-wife, M. Nirmala, under Sections 22 and 23 of the Indian Divorce Act, 1869, seeking judicial separation from the appellant-husband.

Briefly, the facts of the case are that the appellant-husband and the respondent-wife were married on 11-02-1993 in accordance with the Christian rites and customs. During the wedlock, they were blessed with a child on 02-06-1994. However, after having lived happily for about two months, differences arose between the parties, and they separated their ways. Due to the harassment made by the appellant-husband in 1996, the respondent- wife lodged a criminal complaint against him. Eventually, she filed the aforesaid FCOP before the learned Family Court. As mentioned hereinabove, the Family Court decreed the FCOP in favour of the respondent-wife and directed a

judicial separation between the two. Hence, this appeal before this Court.

Mr. P. Rajagopal Reddy, the learned counsel for the appellant, has pleaded that the respondent-wife has failed to make out the case of cruelty against the appellant-husband. Moreover, the respondent-wife had never pleaded in her pleadings that the appellant-husband had made reckless allegations against her family members. But, even then, the learned Family Court has noted the pleadings of the appellant-husband in his petition, namely OP.No.359 of 2007, filed for restitution of conjugal rights. The appellant-husband had denied these pleadings, but his denial has not been accepted by the learned trial Court. Therefore, the impugned order is highly misplaced; it deserves to be set aside by this Court.

On the other hand, Mrs. S.A.V. Ratnam, the learned counsel for the respondent-wife, has pleaded *firstly*, that the respondent has succeeded in establishing the case of cruelty. Since the appellant-husband failed to financially support the family, since he physically and mentally tortured the

respondent-wife, the respondent- wife had no other option, but to leave the matrimonial home.

Secondly, in his petition in OP.No.359 of 2007, the appellant-husband had, indeed, made reckless allegations of unchastity against the family members of the respondent-wife. Such an act itself would tantamount to “*cruelty*”. Therefore, the learned Family Court was justified in granting a decree of judicial separation in favour of the respondent-wife. Thus, the learned counsel has supported the impugned judgment and decree.

Heard the learned counsel for the parties, and perused the impugned judgment.

It is, indeed, trite to state that cruelty need not necessarily be confined to physical cruelty, but it also extends to mental cruelty. In her testimony, the respondent had described the acts of cruelties committed by her husband. According to the Protection of Women from Domestic Violence Act, 2005, the act of husband in denying financial support to the wife tantamounts to “*cruelty*”. According to the respondent-wife, the appellant-husband never worked despite her efforts to continue him to get a job. In order to

support her family financially, it was the respondent-wife, who had to work as a nurse at the NIMS, Hyderabad. According to her, both during her pregnancy and even thereafter, she was thoroughly neglected by the appellant-husband and his family members. Due to their negligence, she had to carry the child to the hospital where she was working as a nurse. She has also narrated as to how she was physically assaulted by the appellant whenever he would come home in a drunken state. It was due to the cruel behaviour of the appellant- husband that in 1996, she had lodged a complaint against him.

To add injury to insult, in his petition filed for restitution of conjugal rights, the appellant-husband had made reckless allegations against the chastity of the brothers and sister of the respondent-wife. Such an allegation would certainly tantamount to an act of "*cruelty*". Even if it was not pleaded in the pleadings of the respondent-wife, even then the learned Family Court was justified in looking into the pleadings of OP.No.359 of 2007 as both the OPs, namely OP.Nos.322 of 2007 and 359 of 2007, were being heard

together. Therefore, the contentions raised by the learned counsel for the appellant are clearly untenable.

For the reasons stated above, this Court does not find any illegality or perversity in the impugned judgment and decree. This appeal being devoid of any merit is, hereby, dismissed.

As a sequel, Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

(Raghvendra Singh Chauhan, J)

(T.Amarnath Goud, J)

Dt: 19th March, 2019
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