

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO
AND
THE HON'BLE SRI JUSTICE T. VINOD KUMAR**

C.M.A. Nos.854 and 870 of 2019

COMMON JUDGMENT (per Hon'ble Sri Justice T. Vinod Kumar):

These two appeals are preferred against the common order and decree of the Principal District Judge, Nalgonda in Divorce OP No.403 of 2018 and DOP No.448 of 2018, dated 05.08.2019.

- CMA No.854 of 2019 is preferred by the Respondent in DOP No.403 of 2018 challenging the order dt. 05.08.2019 of the Principal District Judge, Nalgonda in DOP No.403 of 2018, whereby the Court below allowed the DOP filed by the respondent in the CMA for grant of divorce.
- CMA No.870 of 2019 is preferred by petitioner in DOP No.448 of 2018 aggrieved by the order dt. 05.08.2019 of the Principal District Judge, Nalgonda in DOP No.448 of 2019 dismissing the DOP filed by her for Restitution of conjugal rights.

2. The respondent in these appeals was the husband of the appellant and they had got married on 16.5.2012.

3. The Court below, treated the respondent in these appeals as 'petitioner' and the appellant herein as 'respondent', and after framing the points as to (i) whether the petitioner has established that the respondent had subjected him to cruelty; and (ii) the respondent had failed to establish that the petitioner had deserted her without any justifiable

reason, had ordered DOP No.403 of 2018 filed by the respondent herein and dismissed the DOP No.448 of 2018 filed by the appellant herein.

4. Since both these appeals arise between the same parties and the pleadings are also common, they are being disposed of by this common judgment.

5. The case as pleaded by the respondent-husband/petitioner in DOP No.403 of 2018 is that on account of various acts of the appellant/respondent, the petitioner was subjected to harassment amounting to cruelty for seeking the relief of grant of divorce.

6. The case of the petitioner before the Court below is that the parties are Christians, that their marriage was solemnized on 16.05.2012 as per Christian customs and out of the said wedlock, they had two girl children who were born in November 2012 and in May 2014 respectively. It is claimed that the respondent in the present appeals was working as a constable at the time of marriage and after the second child was born, differences arose between the appellant and respondent, as the appellant always suspected the character of the respondent and attributed illicit intimacy with various women resulting in quarrels between them both in the privacy of the home as well as in the presence of neighbours and relatives.

7. It is the case of the respondent-husband that due to the conduct of the appellant, he was driven to attempt suicide. The respondent also pleaded that the brother of the appellant had, on one occasion, assaulted him and his brother. As a result of the said actions of the appellant, working of the respondent in discharge of his duties got affected for which he had received rebukes from his superior officers. Coupled with the above, the appellant would leave the company of the respondent without any reason taking away with the two children. Further, it is claimed by the respondent that as a result of the appellant filing criminal complaint under Section 498-A IPC against him, his mother and younger brother and married sister, the respondent was arrested and remanded to judicial custody for 10 days and consequently he was removed from employment as Sub-Inspector of Police immediately after the training is over.

8. The appellant herein claimed that taking advantage of his employment as a Constable, the respondent, in order to get more dowry, had hatched a plan to get rid of her and marry again, as he was averse to live with her because she had given birth to two daughters. The appellant also claimed that she was forcibly evicted from the matrimonial home and that she did not leave on her own volition. The appellant claimed that she has love towards her husband and she was committed to making a happy life with him and that she was

forced to go to police in a helpless state because of the adamant attitude of the respondent.

9. The appellant examined RWs 1-3 while the respondent examined Pws 1-3.

10. The Court below, after considering the evidence of the witnesses on both sides and the documents that were marked in both the OPs, came to the conclusion that the respondent-husband had established that the appellant-wife had subjected him to cruelty and further continuing the marital tie would be detrimental to the husband. It held that there was justifiable cause for the husband for not remaining in the company of the wife and accordingly allowed DOP No.403 of 2018 filed by the husband for grant of divorce and declared that the marriage be dissolved from the date of decree. Insofar as DOP No.448 of 2018 filed by the appellant-wife for restitution of conjugal rights is concerned, having considered the material on record, it dismissed it.

11. Aggrieved by the said common order dated 05.08.2019 of the Principal District Judge, Nalgonda, these appeals are filed by the wife.

12. Heard Smt. S. Vani, learned counsel for the appellant-wife in both the appeals.

13. In both the appeals filed by the appellant-wife, the contentions as urged before the Court below were reiterated and in addition to the said pleas put forth, the learned

counsel for the appellant also sought to plead that the appellant has two small children out of the marital tie and therefore, if the order granting divorce is sustained, she would suffer immensely, apart from the fact that the small children would miss the love and affection of their father. The appellant also contended that she is always ready and willing to join with the respondent herein as his wife and the Court below ought not to have granted divorce in the OP filed by the respondent herein and ought to have allowed OP for restitution of conjugal rights filed by her.

14. Having given due consideration to the submissions made, as seen from the evidence on record, the appellant herein on one hand while alleging adultery by the respondent, is seeking for restitution of conjugal rights. In normal circumstances, the act of adultery itself is a ground for seeking divorce. Further, RW.2, who is the brother of the appellant, had stated that the respondent herein had developed illicit relationship with another woman and that the appellant herein had found the respondent in her company. The evidence of RW.3 is that the appellant herein had filed a criminal complaint under Section 498-A IPC because the respondent herein had filed a case for divorce.

15. As a result of the said criminal complaint filed, the respondent was arrested and kept in custody for 10 days and was also removed from the service. The appellant herself in the evidence before the Court below had stated that the

respondent was ill-treating her with the support of his mother, who was examined as PW.2.

16. The contentions urged by the learned counsel for the appellant-wife are self-contradictory, inasmuch the appellant on one hand alleged harassment at the hands of the respondent, but however, seeks to stay in the company of respondent and seeks for restitution of conjugal rights and also opposes grant of divorce, more particularly after alleging that the respondent had committed adultery.

17. The said claim put forth by the appellant cannot be said to be genuine for the reason that it cannot be expected on her part to undergo the harassment at the hands of her husband by being in his company. The initiation of criminal complaint by the appellant is also another reason for the break down of matrimonial tie, as the said complaint resulted in the respondent being sent to the judicial custody and his removal from service.

18. It is highly improbable to assume that there would be any reconciliation between the parties once a criminal complaint under Section 498-A IPC is initiated.

19. The Court below has also held that as a consequence of the appellant filing complaint under Section 498-A IPC, the respondent-husband was put in judicial custody, removed from service, and this amounted to cruelty justifying grant of relief of dissolution of marriage to the respondent. The said

reasoning of the Court below, in our considered view, is sound and based on the evidence on record and does not call for any interference by this Court.

20. Further, the submission on behalf of the appellant-wife that the grant of divorce results in the appellant suffering immensely is also liable to be rejected, as the Court below, while taking into consideration the fact that the appellant has two small children out of the marital tie with the respondent had granted monthly maintenance, in addition to a direction to the respondent herein to bear the expenditure of education and welfare of the two minor daughters. The said direction, in our considered view, would sufficiently meet the ends of justice in the facts and circumstances of the case. Therefore, these two appeals are devoid of merits and are liable to be dismissed.

21. Accordingly, these appeals are dismissed. However, there shall be no order as to costs.

22. Miscellaneous Applications, if any, pending in these appeals shall stand closed.

M.S. RAMACHANDRA RAO, J

T. VINOD KUMAR, J

Date:22.11.2019
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