

HON'BLE SRI JUSTICE M. S. RAMACHANDRA RAO

AND

HON'BLE SRI JUSTICE K. LAKSHMAN

CIVIL MISCELLANEOUS APPEAL No.963 OF 2019

JUDGMENT: *(Per Hon'ble Sri Justice K. Lakshman)*

Feeling aggrieved by the order dated 18.07.2019 passed in O.P. No.06 of 2016 by the Senior Civil Judge, Kamareddy, the appellant - husband filed the present appeal under Section 28 of the Hindu Marriage Act, 1955.

2. The facts leading to the present appeal are as follows:

i) The respondent - wife filed a petition under Section 13(1)(i-a) and (i-b) of the Hindu Marriage Act, 1955, seeking decree of divorce against the appellant - husband. The contention of the respondent herein in the said O.P. is that her marriage with the appellant was performed on 12.11.2009 and it is an arranged marriage. According to her, they lived happily for one year. Thereafter, the appellant and his family members started harassing her demanding additional dowry. It is also her contention that the appellant used to come to house late hours in the night, beat her and abused her in drunken condition continuously. He developed illicit intimacy with others and started harassing her. According to her, the appellant and his family members necked her out of the house and due to the unbearable torture, both physical and mental, she is staying at her parents house

since last four years. In March, 2013, she along with her parents and community elders, made attempt for reunion, but the appellant and his parents were adamant, and they have necked out the respondent and her parents. It is further contended by the respondent - wife that even then keeping her future and reputation of her parents in mind, she joined the company of the appellant in the year 2014 on the advise of elders at Kamareddy and they lived for a period of two to three months. But, there was no change in the attitude of the appellant and his parents and on the other hand, they have further aggravated the harassment and necked her out of matrimonial house. Therefore, she was left with no other option but to lodge a complaint with the police, who in turn registered a case in Crime No.95 of 2013 for the offences under Section 498-A IPC and Section 4 of the Dowry Prohibition Act. As she could not tolerate the mental and physical torture, she started living separately with her parents since last five years. Therefore, according to her, all the efforts made by her became futile exercise. There was no chance of re-union and the marriage between the appellant and the respondent has irretrievably broken down. There is nothing to continue in the relationship except mental agony and torture. With the said grounds, she filed O.P. No.6 of 2016 seeking dissolution of marriage on the grounds of 'cruelty' and 'desertion'.

3. However, the appellant - husband filed counter in the said O.P. denying all the said contentions of the respondent - wife. According to him, the respondent was not cooperative at all. She used

to pick up quarrels for petty issues and she used to demand to stay separately from his parents. On the said ground, she used to leave the house without informing the appellant. He further contended that on the demand of the respondent, he stayed at her parents house at Machareddy for one year and there was no change in the attitude of the respondent. He further contended that the respondent herein used to abuse him and his family members in foul language and neglected to lead matrimonial life by demanding for separate residence. According to him, on the advice of the elders, they have lived at Kamareddy separately for some time and even there also the respondent continued the said attitude and left the house without intimation and he never harassed the respondent as alleged by her. All the efforts made by him and his family members to convince the respondent to lead matrimonial life went in vain. However, he has contended that he is ready to take back the respondent and to lead matrimonial life with her. With the said contentions, he prayed for dismissal of the said O.P.

4. The Court below, on consideration of evidence both oral and documentary, vide order dated 18.07.2019 allowed O.P. No.6 of 2016 granting decree of divorce in favour of the respondent - wife by dissolving the marriage, performed with the appellant - husband on 12.11.2009 to be effective from the date of the order.

5. Feeling aggrieved by the said order, the appellant filed the present appeal.

6. Heard Sri Jithender Rao Veeramalla, learned counsel for the appellant.

7. To prove the said contentions, the respondent - wife examined herself as PW.1 and marked Ex.P1, original wedding card along with marriage photograph. Whereas, respondent examined himself as RW.1, but no documentary evidence was let in.

8. From the above pleadings of the parties, the admitted facts are that their marriage was held on 12.11.2009 and they lived happily for one year. Thereafter, they started quarreling with each other. It is the contention of the respondent that the appellant has developed illicit relationship with others and used to come to house late in the night. He used to beat the respondent in drunken condition and he and his family members demanded additional dowry. According to her, the appellant and his family members necked her out and she made all her efforts to join the company of the appellant to lead matrimonial life in 2013 and the same could not be materialized due to adamant attitude of the appellant and his parents. However, she joined the company of the appellant in the year 2014 with the intervention and advise of the elders and lived for a short period of two to three months. According to her, there was no change in the attitude of the appellant herein and on the other hand, he and his family members further aggravated the harassment by demanding additional dowry. Therefore, she lodged a complaint with the police for the offences under Section 498-A of IPC and Section 4 of the dowry Prohibition Act and the same was

registered as Crime No.95 of 2013 by the Police, Kamareddy. It is the contention of the respondent that due to unbearable torture both physical and mental, she left with no other option but to live with her parents separately since last five years. According to her, since last five years, there is no resumption of cohabitation and their marriage irretrievably broken down and there are no chances of re-union.

9. However, it is the contention of the appellant that the respondent was not cooperative to lead matrimonial life, she used to demand to live separately and used to abuse him and his parents in foul language. She used to quarrel for petty issues. He never harassed the respondent and never demanded additional dowry. According to him, he was acquitted in the criminal case and he is ready to take back the respondent to his company and lead matrimonial life.

10. The above pleadings reveal that there are strained relations between the appellant and the respondent. They are making allegations against each other. Even according to the appellant, the respondent never cooperated with him to lead matrimonial life happily and she used to pick up quarrel for petty things, demand to set up separate family. Despite residing separately, there was no change in the attitude of the respondent and he is ready to take the respondent back to his matrimonial house to lead his matrimonial life happily. But, he did not make any effort either by filing an application for restitution of conjugal rights or otherwise. He did not examine any independent witness to disprove the contentions of 'cruelty' and

‘desertion’ made by the respondent. From the material on record, the appellant herein neither adjusted himself with the respondent, nor get the respondent adjusted with him to lead matrimonial life happily. There are no serious efforts made by the appellant to lead matrimonial life happily. The entire pleadings do not disclose the fact of any children born out of their wedlock. On the other hand, it is the specific contention of the respondent that all the efforts made by her to lead matrimonial life happily with the appellant became a futile exercise and due to unbearable torture both physical and mental, necking out from his residence by the appellant, she started living with her parents since last five years.

11. It is relevant to mention that the foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it.

The ideal couple or a mere ideal one will probably have no occasion to go to matrimonial Court.

12. It is also relevant to mention that a three-Judge bench of the Hon'ble Supreme Court in **A. Jayachandra v. Aneel Kaur**¹ has categorically held in paragraph Nos.10, 11 and 12 as under:

“10. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife.

¹. (2005) 2 SCC 22

Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

11. The expression 'cruelty' has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious

effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.(See *Shobha Rani v. Madhukar Reddy*, AIR 1988 SC 121).

12. To constitute cruelty, the conduct complained of should be "grave and weighty" so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than "ordinary wear and tear of married life". The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language

leading to constant disturbance of mental peace of the other party.”

13. Referring the above said judgment, the Hon’ble Supreme Court in **Smt. Mayadevi v. Jagdish Prasad**², almost reiterated the said findings.

14. In the case on hand, the respondent - wife specifically contended that she was subjected to cruelty, both physically and mentally by the appellant - husband and his family members. Though there is a specific contention that the appellant - husband used to come to the house late night in drunken condition and beat her intentionally without any reason. She also made a specific contention that the appellant used to insult her by abusing her in foul language and used to misbehave with her etc. There is no specific denial by the appellant - husband in the counter filed before the trial Court and he did not even adduce any evidence to disprove the said fact.

15. The trial Court on appreciation of evidence both oral and documentary, gave a specific finding that in spite of several attempts made by the respondent herein, the appellant did not join the society of the respondent, more over the appellant did not file any counter claim for restitution of conjugal rights if he is really interested to lead matrimonial life with the respondent. Therefore, the contention of the appellant that he is ready to take back the respondent to his house to lead matrimonial life is not believable. The trial Court also gave a

². (2007) 3 SCC 136

specific finding that the respondent joined the company of the appellant in 2014 with the intervention and advice of the elders for a period of two to three months and there was no change in the attitude of the appellant and ultimately she was necked out from the house. As discussed above, from the material available on record, the respondent - wife was forced to live separately on account of the conduct of the appellant - husband and his family members and they are living separately since last five years. Though the respondent - wife specifically contended in her petition that they are living separately since last five years, there is no rebuttal to the same by the appellant herein in the counter and he has not adduced any evidence to disprove the said contention of the respondent. There was no cordiality left between the parties to live together, the trial Court ordered dissolution of marriage. As contended by the respondent – wife that there is no resumption of cohabitation and their marriage irretrievably broken down and there is no possibility of reunion. Thus, the respondent made out the essential ingredients of ‘cruelty’ and ‘desertion’ to grant decree of divorce by dissolving the marriage.

16. In view of the said specific pleadings and findings and above discussion, we find no reason to interfere with the findings of the trial Court in the impugned order, dated 18.07.2019 in O.P. No.06 of 2016 of the Senior Civil Judge, Kamareddy. Accordingly, the present appeal is dismissed. However, there shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, in the appeal shall stand dismissed.

M.S. RAMACHANDRA RAO, J

K. LAKSHMAN, J

7th November, 2019

KTL/Mgr

