

**HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO
AND
HONOURABLE SRI JUSTICE K. LAKSHMAN**

CIVIL MISCELLANEOUS APPEAL NO.1134 OF 2019

J U D G M E N T:

(Per Sri Justice M.S.Ramachandra Rao)

1. This Appeal is preferred under Section 28 of the Hindu Marriage Act, 1955 by the appellant herein challenging the order dt.25.09.2019 in HMOP No.1 of 2017 on the file of the Senior Civil Judge, Narayanpet.

2. The appellant is the wife of the respondent. They had got married on 13.12.2013 at Wadi in Karnataka State.

The plea of the respondent in the OP

3. The respondent filed O.P.No.1 of 2017 against the appellant seeking dissolution of the marriage between them contending that after the marriage, the respondent and the appellant had lived happily only for two months at Coimbatore; that the appellant started harassing the respondent for silly reasons and threatened the respondent that he must leave her at her parents' house, otherwise she would commit suicide; that the respondent therefore left the appellant in the house of her parents in February, 2014; and that thereafter, the appellant did not turn up till the filing of the O.P. on 13.12.2016 to live with the respondent.

4. It is contended that the parents of the respondent went to the appellant's house, but the appellant refused to meet the parents of the respondent. According to him, even though efforts were made through mediation, the parents of the appellant as well as the appellant refused to

join his company. He also contended that efforts were made before the Station House Officer, Narayanpet in May, 2016 to persuade the appellant to join the respondent, but she refused to join him. He alleged that the appellant had voluntarily refused to lead a marital life with him; that for three (3) years prior to the O.P., there was no relationship between them; that he suffered mentally; and that there was no possibility of the appellant joining his company.

The plea of the appellant in the O.P

5. Counter affidavit was filed in the O.P. by the appellant admitting the relationship of the husband and wife between the respondent and herself and that they got married on 13.12.2013.

6. She contended that at the time of her marriage, there was a demand by the respondent and his parents, because of which cash of Rs.10,00,000/- and 10 tulas of gold were given to the respondent as dowry.

7. She denied that the parties led a happy marital life for two months or that she started harassing the respondent to send her back to her parents' house threatening to commit suicide.

8. She also denied that the respondent left her in her parents' house in February, 2014 as per her wish and stated that she was continuously residing there along with her parents without joining the company of the respondent. She denied that the parents of the respondent visited her parents' house in order to take her back.

9. She alleged that the respondent had filed the O.P. only to get divorce from her in order to marry another woman by receiving more dowry. She denied that there was any panchayat held in 2016 at Narayanpet Police Station.

10. According to her, after her marriage with the respondent, her younger sister met with an accident and was admitted in a hospital at Hyderabad and she and the respondent went to Hyderabad to see her, but the respondent left her at Hyderabad and went away to his native place.

11. She stated that she went to the respondent's house at Wadi and started living with him. But the respondent, without telling her anything, went away to his work place at Coimbatore and she was residing at Wadi along with her in-laws. She alleged that the parents of the respondent and his elder sister and younger brother started to harass her for additional dowry of Rs.50,000/-, that she informed her family members about it and they visited the respondent's house and narrated their inability to arrange the said additional dowry amount. According to her, her parents requested the respondent that they would pay the said amount later, but the respondent and his other family members tortured her mentally and physically and in March, 2015, the respondent drove her out of his house and she was forced to stay with her parents.

12. She contended that after the said incident, her parents and elders in April, 2015 visited the house of the respondent to settle the matter and advised the respondent not to harass her for dowry, but the respondent and his family members did not listen to their advice.

13. She also alleged that without disclosing anything to her, the respondent went to South Africa under job visa, stayed there and started earning money. She alleged that during that period, she joined her in-laws at Wadi, but she was again harassed for additional dowry and was pressurized to execute a divorce deed.

14. She also stated that she made a complaint under Section 498A IPC and also Sections 3 and 4 of the Dowry Prohibition Act in Crime No.12 of 2017 implicating the respondent, his parents and sisters before the Judicial First Class Magistrate's (JFCM) Court at Narayanpet. She stated that she was ready to join the company of the respondent unconditionally.

15. It is not in dispute that the appellant also filed M.C.No.2 of 2017 before the JFCM Court, Narayanpet against the respondent and the said Application was allowed on 06.07.2018 directing the respondent to pay Rs.5,000/- to the appellant towards maintenance. The Magistrate held that there were serious disputes between the parties and that the appellant even tried to commit suicide as per the evidence on record and so it was a fit case to award maintenance to the appellant.

16. In O.P.No.1 of 2017, the respondent examined P.Ws.1 to 5 and the appellant examined R.Ws.1 to 3.

The order of the Court below

17. By order dt.25.09.2019, the Court below allowed the O.P. and dissolved the marriage between the parties.

18. After considering the evidence on both sides, the Court below held that at the time of the marriage of the appellant with the respondent, the appellant was studying 4th year B.Tech. course and after the marriage, the appellant went to stay in a hostel for her studies; that the sister of the appellant got married four (4) months after the marriage of the appellant with the respondent i.e., in April, 2014; that the appellant had lived with the respondent only for two months and had been staying in Hyderabad since January, 2014; that the respondent went to South Africa, but the appellant did not join him even after his return from South Africa; that the respondent was employed in Coimbatore, but no criminal complaint was filed at Coimbatore against the respondent for the alleged dowry harassment of the appellant by him and his family members; that P.Ws.1 to 5 stated that the appellant had threatened the respondent that she would commit suicide if she was not dropped in her parents' house; that the alleged harassment of the appellant by the respondent and his family members was not proved by any cogent evidence; that the evidence on record showed that the appellant was not interested to join the respondent and because of her threat to commit suicide, no prudent man would take any risk. It also held that in fact, the appellant had treated the respondent with cruelty and had also deserted him from February, 2014. It therefore held that the respondent was entitled to a decree for divorce against the appellant.

19. Assailing the same, this Appeal is filed.

20. Heard the learned counsel for the appellant. The counsel for the appellant stated that the Court below erred in allowing the O.P and the findings of the Court below were unsustainable.

The consideration by this Court

21. The marriage between the parties took place on 13-12-2013 at Wadi. At that time the appellant was studying 4th year B Tech Course and the respondent was employed at Coimbatore.

22. From the facts narrated above, it is clear that the parties had not been living together at least from February, 2014.

23. Also the appellant had filed a complaint under Section 498A IPC against the respondent, his parents and his sisters.

24. It is also not in dispute that the appellant had filed M.C.No.2 of 2017 before JFCM Court, Narayanpet and secured an order of payment of maintenance of Rs.5,000/- against the respondent.

25. According to the appellant, as per demand of the respondent and her parents, Rs.10,000/- and 10 tulas of Gold were given to parents of the respondent at the time of her marriage with the respondent. But appellant in her evidence as RW1 stated that she did not file any receipts for the gold purchased at the time of her marriage with the respondent and also did not file any document to prove payment of dowry. RW2 , the mother of the appellant also stated likewise. So there is no evidence that any dowry was given to the respondent or his family at the time of the marriage.

26. While the respondent alleged that petitioner lived with him only for 2 months after the marriage, and the appellant denied it, R.W.2, the mother of the appellant, admitted in her chief-examination affidavit that the appellant had lived in the company of the respondent only for *a few days*. The marriage of the sister of the appellant took place, according to RW2, 4 months after the marriage of appellant and the respondent in December, 2013 i.e., in April,2014. According to RW2, the appellant had stayed in a hostel for her exams prior to 15 days of the appellant's sister's marriage. This also proves that by that date the appellant was not living with the respondent. Therefore the plea of the appellant that she lived for one year with the respondent is false.

27. PWs 1-5 stated categorically that the appellant threatened to commit suicide if she was not left at her parents' house two months after the marriage.

28. PW4 stated in cross examination that the appellant, two months after the marriage, insisted that the respondent should live separately by leaving his parents. He is also related to the mother of the appellant.

29. According to the appellant, the respondent and his parents and sisters had treated her with cruelty and driven her out of the house of the respondent/his parents by making illegal demands of dowry. But the mother of the appellant/RW2 admitted that no dowry harassment case was filed against the respondent at Coimbatore.

30. RW2 stated that one year of her second daughter's marriage, she had an accident and was admitted in a Hospital. The accident therefore would have occurred in April, 2015. The appellant and RW 2 both stated that the respondent accompanied the appellant and both came to see the appellant's sister who suffered the accident. Had the respondent harassed the appellant, he would not have accompanied the appellant to see her sister who suffered the accident.

31. Therefore it appears that without any valid reason, the appellant deserted the respondent and denied him conjugal life. She also leveled false allegations that he and his family members demanded dowry. It appears that the appellant was left at her parents' house by the respondent after she insisted on staying with her parents and threatened to commit suicide otherwise.

32. In these circumstances, we are of the opinion that the Court below was right in holding that not only had the appellant deserted the respondent and avoided leading a marital life since February, 2014, but also her threat to commit suicide put the respondent at risk.

33. Also, the filing of the criminal complaint under Section 498A IPC by the appellant against the respondent would make it difficult for the parties to lead a happy marital life.

34. We are also of the view that when it is the very case of the appellant that the respondent and his family members had allegedly harassed her for dowry, why she is opposing the grant of divorce is

inexplicable because if her contention were to be correct, she would herself be subjecting herself to further cruelty at the instance of the respondent.

35. In these circumstances, we do not deem it appropriate to interfere with the order passed by the Court below dissolving the marriage between the parties.

36. Accordingly, the appeal fails and is dismissed. However, liberty is given to the appellant to claim, through a separate proceeding, further maintenance/permanent alimony from the respondent in accordance with law by filing separate petition in that behalf.

37. Pending miscellaneous petitions, if any, shall also stand dismissed. No costs.

M.S.RAMACHANDRA RAO, J

K.LAKSHMAN, J

Date: 09-01-2020

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