

**THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
AND
THE HON'BLE SRI JUSTICE NAGESH BHEEMAPAKA**

FAMILY COURT APPEAL No.80 OF 2008

JUDGMENT: (Per Hon'ble Dr.SA,J)

This appeal, under Section 19 of the Family Courts Act, 1984, is filed by the appellant/husband, aggrieved by the order and decree, dated 12.05.2006, passed in O.P.No.742 of 2003 by the learned Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Red Hills, Nampally at Hyderabad, whereby, the subject O.P. filed by the appellant/husband, under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955, seeking to grant divorce by dissolving the marriage performed between him and the respondent/wife on 09.03.1991, was dismissed.

2. Heard the learned counsel for the appellant/husband and perused the record.

3. There is no representation for the respondent/wife. Several times the respondent/wife was accommodated to make submissions in this case through her counsel. For the reasons best known to her, submissions are not made on her behalf.

4. Learned counsel for the appellant/husband would submit that the marriage between the parties was solemnized on 09.03.1991 as per Hindu rites and customs. The respondent/wife was in the company of the appellant/husband till 12.03.2000. Thereafter, she started living with her parents. Even on the death of the parents of the appellant/husband, the respondent/wife did not visit the house of the appellant/husband. The respondent/wife foisted false criminal cases against the appellant/husband and his family members and the said cases ended in acquittal, in terms of the compromise entered into between the parties. The appellant/husband is regularly paying maintenance to the respondent/wife. There is ample evidence on record to substantiate that there was cruelty on the part of the respondent/wife. There are no efforts from the side of the respondent/wife to join the company of the appellant/husband. The marriage between the parties is irretrievably broken down. In the given circumstances, the Court below ought to have dissolved the marriage performed between the parties and ultimately, prayed to set aside the impugned order and decree, dated 12.05.2006, and allow O.P.No.742 of 2003 by dissolving the marriage performed between the parties.

5. Before the Court below, the respondent/wife had denied the allegations made against her.

6. As seen from the material placed on record, the marriage between the appellant/husband and the respondent/wife took place on 09.03.1991, as per Hindu rites and custom. During their wedlock, they were blessed with two children. The subject O.P. was filed by the appellant/husband seeking divorce on the grounds of cruelty and desertion. Though criminal cases were registered against the appellant/husband and his family members, the said cases ended in compromise in between the parties. The respondent/wife left the company of the appellant/husband on 12.03.2000. Since then, both the parties are living separately. No efforts were made by either side for amicable settlement of the dispute between the parties. There is specific evidence of the appellant/husband (PW.1) that the respondent/wife did not properly cohabit with him and registered false criminal cases under Section 498A I.P.C. against him and his family members. The material placed on record reveals the same. In view of these circumstances, it is appropriate to refer the decision rendered by the Honourable Supreme Court in **Naveen Kohli v. Neelu Kohli**, wherein a three-Judge Bench of the Honourable Supreme Court observed as follows:

“Once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the

law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.”

7. The Honourable Supreme Court, in a catena of judgments, has exercised its inherent powers under Article 142 of the Constitution of India for dissolution of a marriage where the Court finds that the marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which the divorce could be granted.

8. As seen from the oral and documentary evidence and other material placed on record, both the parties to the litigation were living separately since 12.03.2000. The marriage between the parties has broken down beyond repair and there is no possibility of reunion. It has become unrealistic. There are no efforts from either side to make an amicable settlement in between the parties. The marital tie is beyond repair and the marriage has become only fiction. It is only a legal tie. By refusing to sever marital tie in cases of this nature, the law does not serve sanctity of marriage, and on the contrary, it shows scant respect for the feelings and emotions of both the parties. The marriage between the parties to the litigation is beyond salvage and has broken down irretrievably. Under

these circumstances, we deem it appropriate to dissolve the marriage performed between the parties by granting a decree of divorce.

9. Accordingly, the appeal is allowed by setting aside the order and decree, dated 12.05.2006, passed in O.P.No.742 of 2003 by the learned Additional Metropolitan Sessions Judge for the Trial of Jubilee Hills Car Bomb Blast Case-cum-Additional Family Court-cum-XXIII Additional Chief Judge, Red Hills, Nampally, at Hyderabad. The marriage performed in between the appellant/husband and the respondent/wife on 09.03.1991, stands dissolved by a decree of divorce.

Miscellaneous Petitions, if any, pending in this appeal shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

NAGESH BHEEMAPAKA, J

Date: 19.10.2022
MD