

THE HON'BLE JUSTICE G.SRI DEVI

AND

THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI

F.C.A.NO.164 OF 2016

JUDGMENT (Per the Hon'ble Smt. Justice M.G.Priyadarsini)

The appellant herein is the husband and the respondent is his wife. He filed O.P.No.218 of 2012 on the file of Family Court at L.B.Nagar, Rangareddy District under Section 13(1)(ia) of Hindu Marriage Act, 1955 (for short 'the Act') seeking for dissolution of marriage. The Trial Court vide order and decree dated 02.08.2016 dismissed the petition. Assailing the same, the husband is before this court.

2. For the sake of convenience, the parties will be referred to as per their array in the O.P.

3. The case of the petitioner – husband is that his marriage with the respondent was performed on 22.08.2010 and after the marriage, they visited Tirumala Tirupathi Devasthanam along with the family members of both sides, and their marriage was consummated.

(i) That the petitioner was working as a Clerk in Vijaya Bank at the time of the marriage, and whereas the respondent was highly qualified women and completed her B.Tech and from the date of the marriage, she had temper, because of her educational qualification, and never respected the petitioner, and always used to behave with the

petitioner adamantly and she never adjusted with the petitioner and his parents and used to force him to get separated from his parents, as a result, there were quarrels in between them.

(ii) That the marriage of the petitioner was proposed by one Sri Kamalakar Rao and the father of the respondent informed him that she had met some slight burn injuries over her neck part, as such, she used to wear the dress in full neck and that the petitioner and his family members believed the version of her father and without any suspicion he married her and on the first day night the petitioner was shocked because her neck and breast portion was completely burnt and she is not fit for marital life and that the father of the respondent cheated him by suppressing the reality and that the petitioner adjusted with the respondent, but she never adjusted with him, and she did not even provide basic requirements like tea or food etc., to the petitioner when he comes from the office.

(iii) That the respondent is also suspicious in nature and always suspected him and whenever the petitioner receives phone calls, she created a big violence and used to quarrel with him and also demanded for separation from his parents and thereby she used to behave with him in a cruel manner and she also threatened to lodge false complaint against the petitioner and his relatives and send them to jail, as such, the attitude of the respondent is very irresponsible. She never lived as a Hindu wife and she

used to make simple issues into complicated one, and every day used to quarrel with him on every aspect, and ultimately, left the matrimonial home on 3.12.2010.

(iv) That the petitioner visited several times to convince her and her parents, but she bluntly refused to join him and the well wishers and community elders also tried their best, but all the efforts made by them resulted in vain.

(v) That the respondent used to harass him by sending antisocial elements to his house and office and threatened with dire consequences and she also lodged false complaint with Women Police Station, Saroornagar vide Cr.No.161 of 2011 against the petitioner, his parents, sister and also his friend, and the same is pending on the file of XVI Metropolitan Magistrate, L.B.Nagar.

(vi) With these averments, the petitioner filed the petition seeking for dissolution of the marriage on the ground of 'cruelty'.

4. The respondent – wife filed counter affidavit denying the averments made by the petitioner. Her case is that the petitioner and his family members demanded dowry of Rs.2,00,000/- cash and Rs.1,00,000/- towards sister-in-law lanchanam, 54 tulas of gold, 4 kgs. of silver, Rs.50,000/- towards cloths and that Acs.4-00 of land to be transferred in the name of the respondent before the marriage. The father of the respondent fulfilled all their demands and also transferred the land in her name on 13.8.2010.

(ii) That in the first week of April, 2010, the respondent along with her father went to the house of one Sri Kamalakar Rao, requesting him to search for a job for her, and one week thereafter, the said Kamalakar Rao, telephoned to her father, and asked to meet him, and accordingly her father met him, and that he expressed about the alliance of the respondent with the petitioner, and also disclosed about his job, character and other details and fixed a date i.e., on 19.04.2010, for meeting of both the parties, and on that day, the petitioner along with his parents, and the respondent with her parents, met at the house of the mediator, and at that time, the father of the respondent informed the mediator about the accidental burns received by the respondent on her neck and the chest parts, and the said mediator in turn informed the same to the petitioner and his family members and two days thereafter i.e., on 21.04.2010 there was a meeting with the petitioner and his family members, and they expressed their willingness to proceed further, and at that time, the mediator Kamalakar Rao informed them about the accidental burns of the respondent over the neck and chest, and the petitioner and his parents enquired about the treatment undergone by her with Dr. Sugunakar Reddy, Yeshoda Hospital, Malakpet, Hyderabad and the said doctor informed about the treatment given by him with regard to the burns received by the respondent, and further informed them, that he suggested a minor surgery to the respondent for correction of nipples of the breast, to avoid future complication to feed the children. That immediately the father of the petitioner

informed the father of the respondent that respondent should undergo surgery, and accordingly she was admitted on 16.5.2010 at Yashoda Hospital, Malakpet, and was operated on 17.5.2010, and the parents of the petitioner visited the hospital on 18.5.2010 and met the doctor and enquired about everything and clarified about their doubts. Thus the question of concealing anything muchless burn injuries received by the respondent, does not arise.

(iii) That the respondent along with her family members visited the house of the petitioner in the second week of June, 2010 and after one week, the petitioner, his friend namely Shailendra, and his family members visited the house of the respondent and during the talks the petitioner's family members demanded dowry, and father of the respondent agreed, and engagement was fixed on 7.7.2010.

(iv) That the petitioner and his family members showed the respondent to Dr. Sudhakar, Plastic Surgeon at Durgabai Deshmukh Hospital, Vidyanagar, who also told the same thing as suggested by Dr.Sugunakar Reddy of Yashoda Hospital, with regard to the burn injuries of the respondent, and further told them that there is nothing to worry and advised not to trouble the respondent, and accordingly the engagement ceremony was performed on 7.7.2010, and ultimately the marriage was performed on 22.8.2010. The father of the petitioner fulfilled the demands of the petitioner.

(v) That the petitioner and the respondent lived happily for a period of two weeks after the marriage, and suddenly the petitioner changed and the respondent thought

that it is initial temperamental adjustment, and having great hope, the respondent adjusted herself, and from the second week of October, 2010 the petitioner and his family members started torturing her to undergo plastic surgery otherwise she has to leave the matrimonial home, or to sign divorce papers. As there is no other way, she accepted their proposal, but the petitioner and his parents restricted her from doing household work, and did not allow to go out of the house. While so, when the respondent was ready to undergo plastic surgery, she herself purchased tissue extracted worth Rs.20,000/- for the purpose of operation which was fixed on 3rd week of December, 2010, and the petitioner and his family members stated that the respondent should stay at her parents' house before operation and two years after operation. The respondent was shocked to hear the same, and requested them not to instruct such things. But the petitioner's sister and mother dragged her out of the house, and thrown out her sarees and other things on the face of the respondent, and necked out from their house and the respondent informed the same to the petitioner, but he did not take any steps and kept quiet, as such the respondent went to her parents house on 3.12.2010.

(vi) That thereafter the petitioner took her to three doctors of different hospitals to get plastic surgery and after such visits, the petitioner did not allow her to join him, and after seeing his attitude and his family members, the respondent and her parents called for panchayat for 4 or 5 times before the mediator Kamalakar Rao, but there was

no fruitful result. The family of the respondent requested the petitioner several times to join the respondent to lead marital life. The petitioner informed them that he is going to be transferred to Vijayawada, and promised that thereafter he would take the respondent to Vijayawada. Believing his words, they waited for considerable time. Thereafter, the respondent went to Vijayawada with her father on 11.8.2011, and the petitioner represented that he would take a house on rent and inform the same and believing him, they returned back to Hyderabad.

(vii) That thereafter, the petitioner informed through mediator that he wanted divorce with the respondent. He further informed that unless the respondent signs the divorce papers, he is not going to return the gold and silver ornaments. Thereafter, filed the present petition seeking divorce with false and baseless allegations.

(viii) That the respondent never sent any antisocial elements to the house or office of the petitioner and that the said allegations are nothing but false. The respondent lodged a complaint against the petitioner, his parents, sister and his friends vide Cr.No.161 of 2011 and same is pending.

(ix) With the above averments, the respondent sought for dismissal of the petition filed by the petitioner for divorce.

5. Based on the rival pleadings, the Trial Court framed the following issues for trial:

1. Whether the petitioner is entitled to seek the relief of dissolution of the marriage on the ground of cruelty?

2. To what relief?

6. To prove the case of the petitioner, P.Ws.1 and 2 were examined and Exs.P-1 and P-2 were got marked. On behalf of the respondent R.Ws.1 to 3 were examined and Exs.R-1 to R-4 were got marked.

7. Appreciating the entire evidence both oral and documentary, the Trial Court dismissed the petition holding as under:

“Having examined the evidence adduced by both the parties carefully and coupled with facts and circumstances of the case, the claim put forth by the petitioner that he is not aware of the burn injuries sustained by the respondent and that the respondent used to torture him seems to be totally invented for the purpose of filing of the present case and the petitioner totally failed to prove the cruelty in any manner and whereas the respondent / wife proved that the petitioner having got knowledge about her sustaining injuries, filed a false case. The principles laid down in the judgment relied upon by the petitioner are inapplicable to the facts of the present case. Hence, it can be held that the petitioner is not entitled to seek the relief of dissolution of the marriage and accordingly the point is answered against the petitioner and in favour of the respondent.”

8. Assailing the above order and decree of the Trial Court, the husband filed the present appeal.

9. This court admitted the appeal on 20.10.2016. On 26.04.2022, this court finding that there is an element of settlement present in the matter, referred both the parties to Mediation Centre of the High Court of Telangana for settlement. The Mediator, appointed by the Mediation and Arbitration Centre, High Court for the State of Telangana, filed report dated 13.07.2022 stating that mediation has been unsuccessful. Accordingly the Mediation and Arbitration Centre, vide proceedings dated

13.07.2022 transmitted the said report to this court. Thereafter the matter was heard on merits.

10. Sri T.Srikanth Reddy, learned counsel appearing for the appellant submits that the grounds on which the divorce was sought was cruelty, desertion and irretrievable break down of marriage. *Inter alia* the petitioner has also averred that the parents of the respondent has cheated him by concealing the burn injuries sustained by the respondent on her chest. The trial court has only considered this averment, and failed to consider the other grounds raised by the petitioner, and by holding that the petitioner is aware of the burn injuries sustained by the respondent and married her, and thus the trial court dismissed the petition.

11. Learned counsel reiterating the averments made in the O.P. submitted that the respondent subjected the petitioner to cruelty and deserted him without any reasonable cause.

12. He further submits that the marriage between the parties was performed on 22.08.2010, and the respondent left the matrimonial house on 3.12.2010 without any reasonable cause, and she did not make any efforts or filed any petition for restitution of conjugal rights, for reunion, and after a period of about eight months after leaving the matrimonial house, she lodged report on 07.08.2011 under Section 498-A IPC against the petitioner, his family members and his friend, which was registered as a case

in Cr.No.161 of 2011, and after filing of charge sheet, is pending for adjudication on the file of XIV Metropolitan Magistrate, L.B. Nagar, Hyderabad.

13. Learned counsel further submits that during the year 2016 i.e., after a period of about six years after leaving the matrimonial house, respondent filed D.V.C.No.51 of 2016 against the petitioner, his sister and parents and the same is still pending adjudication, and in the said case, as per the directions of the court, petitioner is paying monthly maintenance of Rs.15,000/- since 2016 till date.

14. The above circumstances show that the respondent is not interested in continuing the marital relationship with the petitioner and with her behavior as narrated in the petition, and also by filing false cases against the petitioner and his family members, she has subjected the petitioner to 'mental cruelty'. He also submits that when this court has referred the parties to Mediation, for arriving at a settlement, if any, the respondent has not even attended the Mediation.

15. He submits that since about 2011 the parties are living separately and as the wife has filed false cases against the petitioner and his family members, it amounts to cruelty, and further if at all she was having any intention to continue the marital relationship, she might have filed petition seeking for restitution of conjugal rights. Hence, it has to be taken that she is not interested for reunion, and she also did not attend the Mediation Centre, as per the directions of this court for settlement.

Therefore, in view of these facts and circumstances, the petitioner / appellant is entitled for a decree of divorce.

16. Learned counsel for the petitioner in support of his contentions, relied on the judgment of the Apex Court in SAMAR GHOSH vs. JAYA GHOSH¹ and also on a decision of a Division Bench of the High Court of Andhra Pradesh at Amaravati in GRANDHAM SRIDHAR vs. SMT. GRANDHAM JAYA VANI².

17. On the other hand Sri K.R.L.Sarma, learned counsel appearing for the respondent – wife while supporting the impugned order and decree of the Trial Court submits that the main ground on which the divorce petition was filed by the petitioner was that the parents of the respondent by concealing the burn injuries received by the respondent on her chest, performed the marriage, which was found to be incorrect by the court. To prove the other grounds, petitioner relied on the evidence of P.W.2. The trial court found that he is a hearsay witness, and that the same cannot be relied upon. As the petitioner failed to prove the grounds of cruelty and desertion, the Trial Court rejected his prayer for divorce.

18. He, further reiterating the averments made in the counter affidavit filed before the Trial Court, submits that the allegations made by the petitioner against the respondent are found to be incorrect, and even if they are accepted to be true, for the sake of argument, they are not of serious in nature, they are in the nature of ordinary

¹2007(4) ALD 11 (SC)

²C.M.A.NO.1274 OF 2005 dated 03.07.2019

wear and tear in married life, and on these allegations, decree of divorce cannot be granted.

19. He submits that as the petitioner and his family members, tortured the respondent, by throwing her belongings on the road, and having no other alternative she left to her parents house, and further she was also cheated by the petitioner saying that he would take her to Vijayawada on getting transfer and after searching a house, and believing his words, the respondent went to her parents house. He submits that in view of these circumstances, it cannot be said that the respondent has deserted the petitioner. As she was tortured by the petitioner and his family members, respondent was forced to file cases to assert her rights, and hence filing of cases as provided under law, which are pending adjudication, cannot be treated as subjecting the petitioner to cruelty. Therefore, he submits that there are no grounds to interfere with the impugned order and decree of the trial court, and sought to dismiss the appeal.

20. In support of his contentions, he also relied on the judgments reported in SAVITRI PANDEY vs. PREM CHANDRA PANDEY³, SAMAR GHOSH vs. JAYA GHOSH(1 supra), NAVEEN KOHLI vs. NEELU KOHLI⁴, V.BHAGAR vs. D.BHAGAT⁵, SHOBHA RANI

³(2002)2 SCC 73

⁴AIR 2006 SC 1675

⁵AIR 1994 SC 710

vs. MADHUKAR REDDI⁶, JOYDEEP MANJUMDAR vs. BHARATI JAISWAL MAJUMDAR⁷ and J.ANITHA vs. J.PRAKASH⁸.

21. In view of the facts and circumstances of the case, and the above rival contentions, the issue that arise for our consideration is whether the impugned order and decree warrants any interference?

22. In the present case, though the petitioner alleged that the parents of the respondent cheated him by suppressing the fact of burn injuries on the chest of the respondent, he stated in the affidavit filed in support of the petition, that he adjusted with her. Further from the averments made in the petition, it could be seen that he did not seek divorce on this ground and he main raised the ground of 'cruelty' and 'desertion'.

23. The main grievance of the petitioner is that the respondent has subjected him to cruelty and his case is that the respondent is of suspicious nature and that whenever he receives any phone call, she created big violence and used to quarrel with him. It appears that due to burns injuries, she may be suffering from inferiority complex, and used to quarrel, and also suspect the petitioner. The further grievance of the petitioner is that she demanded for separation from his parents and she also threatened to lodge false complaints and that she used to make simple issues into

⁶(1988)1 SCC 105

⁷(2021)3 SCC 742

⁸LAWS(MAD)-2009-9-401

complicated and that every day she used to quarrel with him and that ultimately left the matrimonial home on 3.12.2010 and though he made efforts before well-wishers and community elders for reunion, but it resulted in vain. That the respondent used to harass him by sending antisocial elements to his house and office and threatened him with dire consequences. On the other hand, the case of the respondent is of total denial.

24. Both the parties have led evidence in support of their claim. Apart from the evidence of P.W.1, who reiterated the averments made in the claim petition, he also examined P.W.2. But the Trial Court found that he is not a direct witness to the incidents alleged by the petitioner, and the Trial Court rightly found that he is a hearsay witness. Both the parties have led evidence in support of their respective claims, as made in the petition and in the counter affidavit, and though the parties were cross-examined at length, nothing contrary to their chief, could be elicited by both the parties. Hence, this court in order to find out the truth or otherwise of the intention of the parties, is required to consider the attendant circumstances and the events, to arrive at a just conclusion.

25. The main grievance of the petitioner is that the respondent filed false criminal case and domestic violence case against him.

26. It is to be seen that the respondent left the matrimonial house of the petitioner on 3.12.2010, and she filed Crl.No.161 of 2011 on 7.8.2011 under Section

498-A against the petitioner and his family members, and subsequently she also filed D.V.C.No.51 of 2016 during the year 2016 i.e., after a period of about six years. Prima facie the ingredients under Section 498-A of IPC and domestic violence are absent in the averments made by the respondent in the counter affidavit.

27. It is to be seen that if really, the respondent is intending to join the petitioner and lead a peaceful life, definitely she would not have indulged in initiating criminal case and domestic violence case against the petitioner and his family members. The petitioner is a bank employee, and filing of cases would affect his job prospects. Hence, this would definitely cause great mental agony, and would also amount to subjecting the petitioner to 'mental cruelty'.

28. The Apex Court in **RAJ TALREJA v. V. KAVITA TALREJA**⁹, held that *"This Court in Para 16 of K.Srinivas Rao v. D.A.Deepa has held as follows: 16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh v. Jaya ghosh, 2007(4) SCC 511, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of the case, amount to causing mental cruelty to the other spouse."*

⁹(2017)14 SCC 194

29. A Division Bench of this court in **P.PADMA v. P. CHENNAIAH**¹⁰, held that false, scandalous, malicious and baseless charges made against husband by wife, *prima facie* amounts to ‘cruelty’, and on the basis of the same, husband is entitled to decree of divorce.

30. As noted above, since 3.12.2010 the respondent is living in her parental house and she also filed criminal case and domestic violence case against the petitioner and his parents. She also implicated the friend of the petitioner in the criminal case. Further the efforts made by this court to settle the issue between the parties did not yield any result, and the husband is not willing to take the wife back, and the wife is not willing for divorce, and since more than a decade both are living separately. In fact the respondent did not even attend the Mediation Centre and hence the mediation remained unsuccessful.

31. In the decision reported in NAVEEN KOHILI vs. NEELU KOHILI (4 supra), somewhat similar situation came up for consideration before the Apex Court. The facts therein disclose that the respondent who is the wife of the appellant, has initiated criminal and civil proceedings and the both are living separately for the past ten years and the marital bond between them was beyond repair, and still the wife is not inclined for divorce. In these facts and circumstances, the Apex Court held that the matrimonial bond between the parties is beyond repair and not to grant a decree of divorce would

¹⁰2022(1) ALD 103 (TS)(DB)

be disastrous for the parties. Accordingly the order and decree of the trial court in denying the decree of divorce was set aside and the appeal filed by the appellant – husband for a decree of divorce was allowed. The relevant portion of the order is as under:

“Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our mind that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again.

The High Court ought to have appreciated that there is no acceptable way in which the parties can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.

Undoubtedly, it is the obligation of the Court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality.

In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

The High Court ought to have visualized that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.

The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life.

In our considered view, looking to the peculiar facts of the case, the High Court was not justified in setting aside the order of the Trial Court. In our opinion, wisdom lies in accepting the pragmatic reality of life and take a decision which would ultimately be conducive in the interest of both the parties.

Consequently, we set aside the impugned judgment of the High Court and direct that the marriage between the parties should be dissolved according to the provisions of the [Hindu Marriage Act, 1955](#).

32. Further, the Apex Court in the decision reported in SAMAR GHOSH v. JAYA GHOSH (1 supra), held as under:

“100. (xiv) Where there has been a long period of continuous separation, it may fairly be concluded 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 to the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

33. Having regard to the law laid down by the Apex Court, and the facts and circumstances of the case, this court is of the considered view that the wife by indulging in criminal and civil litigation has made the matrimonial bond beyond repair and subjected the petitioner to ‘mental cruelty’ and on this ground the petitioner is entitled to seek for divorce. The issue framed is answered accordingly.

34. For the foregoing reasons, the impugned order and decree of the trial court is set aside and the O.P.No.218 of 2012 filed by the petitioner / appellant is allowed and the marriage between the petitioner and the respondent held on 22.08.2010 is dissolved and a decree of divorce is granted to the petitioner.

35. The appeal is accordingly allowed.

36. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

G.SRI DEVI,J

M.G.PRIYADARSINI,J

DATE: 21--09—2022

AVS