

THE HON'BLE JUSTICE G. SRI DEVI

AND

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

F.C.A.NO.78 OF 2021

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

The appellant and the respondent herein are the wife and husband respectively. Respondent – husband filed FCOP.No.110 of 2016 on the file of Family Court at Secunderabad under Section 13(1)(ia) of Hindu Marriage Act, 1955 (for short 'the Act') seeking dissolution on the ground of cruelty. Vide order and decree dated 16.04.2021 the Trial Court allowed the petition dissolving the marriage of the petitioner with the respondent, which was held on 10.04.1998 at Khammam town. Assailing the order and decree dated 16.04.2021, the wife filed the present appeal.

2. The respondent herein is the petitioner before the Trial court and the appellant herein is the respondent. The appellant herein will be referred to as the respondent, and the respondent herein as the petitioner, i.e., they will be referred to as per their array in the original petition.

3. ***Petition averments:*** The case of the petitioner – husband is that his marriage with the respondent was solemnized 10.04.1998 at Khammam town and that after the marriage, respondent joined him at Medak, and they lived happily for a period of two years and thereafter due his transfer, they shifted to Hyderabad.

(i) That the respondent completed her MBA and software courses with the financial support of the petitioner. As the brother of the petitioner is working as software employee abroad, he arranged amounts to the petitioner for purchasing landed properties. In that process, petitioner being affectionate with the respondent, purchased all the three properties in her name. Taking advantage of the innocence of the petitioner, respondent succeeded to get the properties in her name. Apart from the above, petitioner purchased a residential flat at Tarnaka in the year 2005 by obtaining loan, and also obtained the permission from his department for such purchase.

(ii) It is alleged that the respondent treated the petitioner as money machine and in her entire matrimonial life, respondent never acted as a dutiful wife. That the respondent threatened the petitioner that if he will not mend to her words, she will use the matrimonial laws as weapon, and foist false cases against him and also brought some women organization people for that purpose.

(iii) That in the year 2011 respondent left the petitioner and joined a job at Bengaluru without informing the petitioner and expressed her unwillingness to return. The petitioner tried to convince the respondent to return to matrimonial house, but in vain. However, in the year 2013, respondent returned to Hyderabad and joined the petitioner along with the child. Even after her return also, the respondent has not changed her attitude. The respondent did not allow the petitioner to take care of his parents including their medication. Respondent also

insisted the petitioner to register agricultural lands, which are their ancestral properties, in her name. Respondent is not interested in household work and declined to do household work, stating that she is not a servant. In view of her attitude, petitioner appointed two servant maids to do all the household works and to prepare food separately for him and respondent, and even after the petitioner accommodating servants, she forced them not to prepare food to the petitioner, except to her and the child. Due to this mental and physical torture, petitioner's health was spoiled and an ulcer was formed in his stomach in addition to mental stress.

(iv) That in the year 2015 respondent insisted the petitioner to register the residential flat in her name, otherwise she will create mess and damage his reputation in the police department as well as in the society. In fact, petitioner requested the respondent that if respondent assures that she will look after the daughter in good manner, then he will execute a registered sale deed in her favour. On believing the words of respondent, petitioner registered the same in favour of the respondent.

(v) That in the month of August, 2015, when the parents of the petitioner came to his residential flat, respondent behaved in a disrespectful manner, and on the next day, when the petitioner went to his job, she bet them indiscriminately without any considerable manner and thrown them out of the house and that when she was questioned by the petitioner, she gave lame excuses.

(vi) That on 4.2.2016, the respondent high handedly threatened the petitioner to leave the flat, otherwise she will falsely implicate in the matrimonial litigation. Having no other alternative, petitioner left the flat, and is taking shelter in one of his family friend's house.

(vii) That all the above acts of the respondent caused mental torture and humiliation to the petitioner. Hence, he was forced to file the present petition for divorce.

4. **Counter averments:** Respondent – wife counter affidavit and denied the allegations made by the petitioner. In the counter affidavit it is stated that the father of the respondent is a rich man and he owned a gold shop at Khammam and used to run bus services to Pilgrimages, and that she has completed her entire education with the financial support of her parents, and that the female child was adopted by them.

(i) That all the properties alleged to have been purchased by the petitioner in the name of the respondent, are in fact purchased with the financial assistance of her parents, and with the money belonging to her.

(ii) That, the respondent made a written complaint to the Superintendent of Police, Khammam on 21.10.2016 against petitioner mentioning the harassment and all types of misdeeds committed by the petitioner against her. The petitioner on several occasions threatened the respondent with dire consequences to do her away, as he could do several things as a Police Officer.

(iii) That the petitioner received injury to his testicles in an accident when he was studying intermediate and by suppressing the said fact, petitioner and his family members performed the marriage between petitioner and respondent, and thereby they committed cheating.

(iv) That the petitioner nowhere in his petition mentioned that the said female child was an adopted daughter and he intentionally misled the court by suppressing the fact.

(v) With these averments, the respondent sought to dismiss the petition.

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

1. Whether marriage of petitioner with the respondent shall be dissolved on the ground of cruelty?
2. To what relief?

6. In support of the case of the petitioner, he got examined himself as P.W.1, examined his maternal uncle as P.W.2, his mother as P.W.3, and also examined the Watchman of Aspin Apartments as P.W.4.

7. On behalf of the respondent, no evidence, either oral or documentary was adduced.

8. Appreciating entire evidence, both oral and documentary, the trial court allowed the petition. Assailing the same, the wife filed the present appeal.

9. Along with the appeal, the appellant/respondent (wife) filed I.A.No.2 of 2021 in FCA.No.78 of 2021 stating that without giving reasonable opportunity to the respondent to adduce evidence on her behalf, the Trial Court passed the impugned order. It is further stated that the petitioner (husband) contracted second marriage behind her back and the same was attended by the relatives and elders of the petitioner. That bringing the said fact to the notice of the Circle Inspector of Women Police Station, Khammam, respondent filed complaint on 22.01.2018. It is submitted that due to corona pandemic, there was communication gap between the respondent and her advocate, as such, she was deprived of the reasonable opportunity to lead evidence. With these averments, the appellant - respondent sought to stay the operation of the impugned order.

10. This court on 10.08.2021 while ordering notice, stayed the operation of the impugned order until further orders in I.A.No.2 of 2021 in FCA.No.78 of 2021.

11. Seeking to vacate the interim order dated 10.08.2021 passed by this court, the respondent (husband) filed I.A.No.1 of 2022 in I.A.No.2 of 2021 in FCA.No.78 of 2021 stating that he has not contracted second marriage as alleged by the petitioner. It is stated that after filing of the FCOP.No.110 of 2016, petitioner filed the following complaints:

1. Cr.No.4 of 2018 dated 23.01.2018 on the file of Women Police Station, Khammam.
2. Cr.No.57 of 2018 dated 11.2.2018 on the file of Chillakallu Police Station, Krishna District, A.P.
3. Cr.No.61 of 2018 dated 15.2.2018 Chillakallu Police Station, Krishna District, A.P.
4. On 7.4.2016 she lodged a complaint before Osmania University Police Station.
5. On 09.04.2016 she lodged a complaint before CCS WPS, Hyderabad.
6. On 19.04.2016 she lodged a complaint before Commissioner of Police, Hyderabad.
7. Filed D.V.C. No.35 of 2019 on the file of JFCM Court Khammam; and
8. She filed a complaint vide C.C.No.4306 of 2021 before the Chairman, Human Rights Commission, Telangana, Hyderabad.

(i) Petitioner (husband) stated that respondent with the help of anti social elements attacked the house of his parents and assaulted his aged parents, and the mother of the petitioner filed Cr.No.58 of 2018 dated 11.2.2018 against the respondent and her accomplices under Sections 447, 354, 323, 506 read with 34 IPC. In connection with the said crime, sixteen accused were arrested and charge sheet was also filed, and the case was numbered as C.C.No.200 of 2019 on the file of Additional Judicial First Class Magistrate, Jaggaiahpet.

(ii) It is further stated that in FCOP.No.110 of 2016 respondent was given ample opportunity to adduce evidence on her behalf, but the respondent, who filed her chief affidavit as R.W.1, did not turn up for cross-examination despite grant of several adjournments, and further, though an Advocate Commissioner was appointed by the Trial Court to record her cross-examination, she did not turn up, and accordingly, her evidence was closed, and even after closing of her evidence, she did not turn up by filing any application seeking to reopen the case. Therefore the Trial Court after giving sufficient opportunity passed the impugned order based on the evidence available on record, and hence it cannot be said that the respondent was not given any opportunity to adduce evidence. With these averments and further reiterating the averments made in the affidavit filed in support of the FCOP, petitioner sought to vacate the interim stay granted by this court on 10.08.2021.

12. Respondent filed reply affidavit to the vacate petition stating that due to Covid pandemic she could not contact her counsel and it resulted in the court proceeding ex parte. She submits that she has good case provided she is given an opportunity to produce documents pertaining to the second marriage of the petitioner. She submits that the petitioner is a police officer, and using his influence, he got the charges for the offences under Sections 494 and 420 IPC deleted in the case filed by her. It is stated that the petitioner and his family members suppressed the health condition of the petitioner, and as this respondent is coming from responsible family, has kept his health issue in secret, and agreed for the adoption of the child. As the respondent ill-treated her and subjected to harassment both

physical and mental, and demanded for additional dowry, and he also committed the offence of bigamy, she filed Cr.No.4 of 2018. Further as the petitioner harassed the respondent and her family members on visiting their house at Anumanchipally village, Cr.No.57 of 2018 was filed. But as a counter blast to Cr.No.57 of 2018, petitioner got filed Cr.No.58 of 2018. Further as the petitioner obstructed the elder brother of the respondent and caused damage to his vehicle, and wrongfully confined him with a criminal intimidation, her brother filed Cr.No.61 of 2018. It is stated that she also filed DVC case, but the petitioner is not attending the court, and is delaying the matter. The respondent has denied the other complaints stated to have been filed by her. She stated that she has filed a complaint before the Human Rights Commission, but the petitioner is not attending the Commission, whereas the respondent is attending the commission, regularly by travelling from Bengaluru.

(i) In the reply affidavit, the respondent further stated that she has completed her graduation even by the time of marriage, and that by much persuasion, respondent permitted her to pursue MBA through distance mode, and the expenses were borne by her father and the respondent. It is stated that the immovable properties are purchased by the petitioner with the monies that the respondent could secure by selling her immovable property. In the affidavit, the respondent gave the properties given by her father, and which were alleged to have been sold by the petitioner and the money and other articles given by her father at the time of marriage.

(ii) She further stated that due to physical and mental harassment she has undergone IVF treatment, due to which, her health deteriorated and after much persuasion, petitioner has allowed to adopt a girl child. The petitioner used to harass the respondent and the girl child by not providing proper food and clothes and made their life miserable, and due to which, she had to leave the petitioner.

(iii) The respondent in the reply affidavit, stated the worth of properties owned by the petitioner. She submitted that the petitioner has ruined her prime period and now that she has to look after the girl child and give her proper education, and as such, sought for a direction to the petitioner to pay permanent alimony of Rs.5 crores to the respondent and to the girl child, who is now aged about 15 years. With these averments, she opposed for vacating of the interim order.

13. After filing of the vacate petition and the reply affidavit by the respondent, the case has undergone several adjournments, and eventually after hearing the arguments of both the counsel in the appeal on merits, the matter was reserved for judgment on 19.09.2022.

14. Heard Sri S.Madhava Rao, learned counsel for the appellant – wife – respondent, and Sri R.Janaki Ram, learned counsel for the respondent – husband – petitioner, and perused material available on record.

15. Learned counsel for the appellant – wife submits that the court below grossly erred in allowing the petition filed by the husband, without properly assessing the credibility of oral and documentary evidence adduced by the

petitioner. He further submits that the Trial Court has not given sufficient opportunity to the respondent to lead evidence on her behalf, and decided the case *ex parte*.

(i) He submits that the claim of the petitioner is that he purchased immovable properties in Hyderabad in the name of the respondent with the money sent by his younger brother, now in USA. But a perusal of the evidence of the petitioner, who was examined as P.W.1, falsifies his claim, since he has admitted that he never received any amount from his brother or his friends through Bank transactions. Though he stated that he received amount in cash from his friends and others, he could not give their names and addresses and particulars of the amount received by him, and he also failed to examine them. He also pleaded ignorance of the particulars of the property. In the sale deeds, it is clearly shown that the amount is paid by the respondent. Further in the cross-examination petitioner admitted that he did not file any proof into the court to show that the sale consideration was paid by him and by his family members.

(ii) Learned counsel for the appellant – wife – respondent submits that petitioner has subjected the respondent to harassment and in fact respondent made a written complaint to the Superintendent of Police, Khammam on 21.10.2016 against the petitioner mentioning the harassment and all types of his misdeeds. He submits that because of the harassment of the petitioner, respondent was forced to

sell several immovable properties, which her father purchased in her name prior to the marriage.

(iii) Learned counsel further submits that petitioner harassed the respondent for additional dowry.

(iv) That the allegation of the petitioner is that the respondent had threatened the mother of the petitioner, bet her and also ill-treated her, is not supported by any evidence. He submits that the mother of the petitioner was examined as P.W.3, and in her cross-examination she admitted that their presence is required at their house to look after agriculture works, sheep and buffaloes, and there is no chance to stay anywhere, as such they used to return home after completion of follow up treatment. From this evidence it is clear that the mother of the petitioner has been returning to their house immediately after treatment. Therefore, question of respondent harassing the mother of the petitioner, or ill-treating her does not arise.

(v) Learned counsel submits that to prove the alleged harassment of the respondent – wife, the petitioner, except examining the interested witnesses P.Ws.2 and 3, has not examined any independent witness.

(vi) That the evidence of P.W.4, who is the watchman of Aspen Apartments, where the parties lived, that the respondent is quarrelsome and that she picks up fight with other residents and other maids and that she ill-treated the parents of the

petitioner, is hearsay and P.W.4 also admitted that he is not an eye witness to the incidents. Hence, his evidence is not trustworthy, and it is hearsay evidence.

(v) Learned counsel further submits that the trial court has drawn an adverse inference against the respondent for not filing petition for restitution of conjugal rights, but in light of the facts and circumstances of the case, and the evidence on record, drawing an adverse inference against the respondent, is not unwarranted as even the petitioner also did not issue any notice for reunion.

(vi) He submits that if the wife remained absent, and did not lead the evidence, the trial Court ought to have followed the procedure laid down under Order 17, Rule 3 of CPC and ought to have decided the matter on merits, but in the present case, the trial Court has not properly appreciated the material evidence available on record and allowed the claim of the petitioner without there being any evidence, and without recording any reasons and that it simply extracted the pleadings and allowed the petition, and hence the same cannot be sustained.

(vii) Learned counsel further submits that taking advantage of the decree for dissolution of the marriage, which is an *ex parte* decree passed by the Trial court, without giving opportunity, the petitioner has contracted a second marriage with one Sundari Sravanthi D/o Sundari Seetaiah, R/o KothaKondapuram village, and for the said wedding, relatives of the petitioner and elders attended. Thus contracting the second marriage, without the proceedings attaining the finality, cannot be sustained.

(viii) With the above submissions, he sought to set aside the impugned order and to dismiss the FCOP filed by the petitioner.

16. On the other hand, Sri R.Janaki Ram, learned counsel for the respondent – husband – petitioner, while reiterating the averments made in the affidavit filed in support of the FCOP, submits that respondent was given ample opportunity to lead evidence. In fact respondent, as R.W.1, filed her chief affidavit, but did not turn up for cross-examination, and, therefore, the Trial Court has appointed an Advocate Commissioner and the petitioner did not turn up even before the Advocate Commissioner, as such the Trial Court has closed the evidence of the respondent. Even after closure, the respondent did not choose to file any petition seeking to reopen the case for leading evidence. Hence, in these circumstances, it cannot be said that respondent was not given opportunity to lead evidence.

(i) Learned counsel submits that the marriage between the parties was solemnized on 10.04.1998 and both the parties lived together till 2010, but out of their wedlock there were no issues.

(ii) He submits that respondent has blamed the petitioner for not getting the pregnancy to her, and she went to the extent of propagating that petitioner is unfit for marital life. In the cross-examination of P.W.1, a suggestion was put to him that as he lost his two testicles, he is not fit for marital life and the respondent could not conceive. The false propaganda made by the respondent and the kind of questions put to the petitioner, shows that he is subjected to mental cruelty.

(iii) He submits that even since the date of marriage, there was no compatibility between the parties and they could not lead happy marital life. He submits that the respondent is in the habit of humiliating the petitioner in front of his friends, relatives and colleagues, and she also is in the habit of deserting the petitioner as per her whims and fancies. He submits that the respondent deserted the petitioner for a long period from 2010, and again she joined solely with an ulterior motive to grab the properties of the respondent by showing fictitious love and got the residential house situated at Tarnaka transferred in her name by way of registered sale deed, and after achieving her goal, she again deserted the petitioner, creating unbearable mental torture.

(iv) He submits that after filing of the present FCOP for divorce, the respondent filed number of criminal cases against the petitioner, which are already referred to above.

(v) He submits that in order to keep the respondent happy, petitioner purchased one open plot admeasuring 139 sq. yards located at Santoshima Nagar Old Safilguda, Malkajgiri Municipality, R.R.District; open plot admeasuring 300 sq. yards at Ameenpur village, Patancherumandal, Medak District and a residential house admeasuring 290 sq. yards out of 580 sq. yards located at Shyam Prasad Mukherjee Nagar under GHMC , Neredmet, Malkajgirimandal, R.R. District.

(vi) Learned counsel further submits that the respondent contested the FCOP and her counsel appearing before the trial court cross-examined the witnesses

examined on behalf of the petitioner, and the Trial Court after appreciating the entire evidence, allowed the petition.

(vii) That even in the reply affidavit filed to the vacate petition, it is admitted that the respondent is living separately, and the respondent is claiming permanent alimony, and this shows that she is not ready and willing to join the marital company of the petitioner.

(viii) He further submits that by filing number of cases, the respondent has subjected the petitioner to cruelty and for the past many years, both are living separately and because of the above circumstances, it is clear that there is irretrievable breakdown of marital bond, and in these circumstances, the petitioner is entitled for a decree of divorce, and accordingly prayed that the order and decree of the Trial Court may be confirmed.

(ix) In support of his contentions, learned counsel relied on the judgments reported in P.PADMA v. P.CHENNAIAH¹, SAMAR GHOSH v. JAYA GHOSH², PANKAJ MAHAJAN v. DIMPLE³, K.SRINIVAS v. K.SUNITA⁴, PANTI MADHUSUDHANA REDDY vs. MADDALI RENUKA @ SUHASINI⁵ and MANJU KUMARI SINGH v. AVINASH KUMAR SINGH⁶

¹2022 (1) ALD 103 (TS) (DB)

²(2007)4 SCC 511

³(2011)12 SCC 1

⁴(2014)16 SCC 34

⁵2016(4) ALD 584

⁶(108)17 SCC 378

(x) Learned counsel submits that as the Trial Court appreciating the entire evidence both oral and documentary available on record, found that the respondent – wife subjected the petitioner to cruelty and accordingly allowed the petition for divorce, no exception may be taken to the impugned order and the appeal may be dismissed.

(xi) Learned counsel further submits that with regard to permanent alimony, the respondent has to file a separate OP under Section 25 of the Act, establishing her right and claim, and hence the said aspect may not be considered in this appeal, and the parties may be relegated to the Family Court for deciding the quantum.

17. Having regard to the facts and circumstances of the case and the rival submissions, the issue that arises for consideration is whether the impugned order warrants any interference?

18. From the material on record it could be seen that petitioner is a Sub Inspector of Police, and the respondent is a postgraduate, possessing MBA degree. The marriage between the parties was performed on 10.04.1998 at Khammam and they lived happily till 2010. Out of the wedlock, there are no issues. The case of the respondent is that they adopted a girl child by name Snigdha, who is now aged about sixteen years and that she is residing separately at Bengaluru with the girl child. The allegation of the respondent is that the petitioner has suppressed the fact of adopting the girl child. But, in the counter affidavit filed by the respondent before the trial court, there is no averment with regard to the particulars *viz.*, wherefrom

the girl child was adopted, and whether any adoption ceremony was performed. Further, from the material on record it could be seen that respondent has not entered into witness box to depose about the factum of adoption. In these circumstances, the allegation of the respondent that petitioner has suppressed the fact of adopting girl child, cannot be sustained.

19. The case of the petitioner is that he purchased the immovable properties with the monies given by his brother, who is working abroad, and also from the monies given by friends and relatives, and further he also purchased a residential flat by obtaining loan, and that on insistence of the respondent, he has executed a registered sale deed in favour of the respondent, without passing of any consideration.

20. On the other hand, the case of the respondent in the counter affidavit is that her father is a rich man and he owned a gold shop at Khammam and used to run bus services to Pilgrimages and that she has completed her entire education with the financial support of her parents. Her further case is that all the properties alleged to have been purchased by the petitioner in the name of the respondent are in fact purchased with the financial assistance of her parents and with some money belonging to her. Her case is that the petitioner demanded additional dowry, as such the respondent was forced to sell the properties purchased by her father prior to her marriage in her name and the sale proceeds were given to the petitioner, and with the said amount, the properties were purchased in the name of the respondent.

21. To prove the above case of the petitioner that he purchased the properties in the name of the respondent with his money, there is no tangible evidence on record. In the cross-examination, P.W.1 deposed that he purchased the properties in the name of the respondent with the financial assistance of his brother, but admits that he never received any amount from his brother, from his friends through bank transactions. Though he deposed that he received the amount in cash from the parents of friends of his brother, as well as friends of his brother, he did not prove the same by examining them and moreover, he deposed that he do not remember where they are residing. Further he admitted that as per the contents of sale deeds, respondent had paid the entire sale consideration. Though he deposed that he paid the sale considerations with the help of his family members, he admitted that he has not filed any proof of document in the court to show that the above said considerations were paid by him and his family members.

22. In the light of the above evidence, it cannot be said petitioner purchased the immovable properties in the name of the respondent with his monies and the averment of the petitioner in this regard is without any basis and cannot be considered.

23. In support of the case of the petitioner, he examined himself as P.W.1, and also examined his material uncle as P.W.2 and the mother of the petitioner as P.W.3. All these three witnesses deposed as per the averments made in the petition.

24. P.W.3 is the mother of the petitioner. The case of the petitioner is that the respondent has ill-treated the mother of the petitioner. This allegations also appears to be false, for the reason that there is no material on record or averment made by the petitioner that mother of the petitioner has ever lived with them. As per the version of P.W.3, she lives with her husband in her village Anumanchupalli in Jagaiahpet mandal of Krishna District. In the cross-examination of P.W.3, she deposed that for the first time she was diagnosed with cancer in the year 1994 or 1995 in B.B. Cancer Hospital at Hyderabad; that she was admitted as in-patient in the above said hospital for 40 days and underwent surgery in the year 1994 or 1995; that she took follow up treatment for every month up to one year; that she used to go along with her husband to Hyderabad for follow up treatment; and that after completion of follow up treatment, she went to house of her son for about 10 times. She admitted that there is requirement of their presence in their house to look after agriculture works, sheep and buffaloes, as there is no chance to stay anywhere, and as such, they used to return home after completion of follow up treatment.

25. Thus from the above evidence it could be seen that there is no material on record to show that P.W.3 lived with the petitioner and the respondent and hence the question of respondent ill-treating P.W.3, the mother of the petitioner, may not arise. Though the petitioner sought to examine P.W.4 watchman to prove this allegation, in his cross-examination he has categorically stated that he is not an eye witness. However, his evidence will be dealt with in detail in the subsequent paragraphs.

26. P.W.4 is the watchman at Aspin Apartments at the relevant time. He deposed that he is working as watchman at Aspin Apartments Complex since 2008 and that the petitioner and the respondent were living at Flat No.303, 'A' block; that his wife worked in their house as maid, doing house hold chores, and was also taking care of their female child; that the petitioner was living at Aspin Apartments and left the apartment in the year 2016; that the respondent is quarrel some and cantankerous, and used to rake up fights with other residents and maids working in the apartment; that when the petitioner returns from duty in the late night, the respondent refused to open the door, and even many times, he had tried and knocked at the door of the flat, but the respondent refused to open the door, and also abused him and the petitioner; that he is aware that the respondent had misbehaved with her in-laws and even thrown them out of the house; that he witnessed that the petitioner's parents who had come from USA in the late night along with the petitioner, who had received them at Airport, and the respondent being absent and their daughter and maid were present in the house; that after the return of the respondent from her employment, she had thrown them out of the house after assaulting them and in the process, the petitioner mother beads chain was also broken; that he gave shelter to the petitioner's parents and informed the petitioner about the plight of the petitioner's parents, as the respondent had locked the flat No.303 and went to her job; and that as his wife was working in their house as a maid to take care of the female child in the absence of the petitioner and respondent, his wife informed that the respondent refused to cook food and used to

rake up issues with the petitioner for no reason; that many apartment owners had even advised the respondent to conduct herself in an elderly way, and not to harass the petitioner and also damage his reputation.

27. In the cross-examination he deposed that he is not an eye witness to any of the disputes with maids by the respondent; that he heard the maids talking in between them and expressing their mind openly; that he did not have any dispute with respondent and never exchanged with any words; that the respondent never scolded him; that approximately 3 ½ years back from today, the petitioner brought his parents at mid night hours from airport to apartment; that by that time there are other security guards taking care of the entrance to the apartment and at the same time, he was asleep in his room; that he do not know when the petitioner and his parents came to the apartment from airport; and that he came to know about their arrival at 7.30 a.m., on the next day morning.

28. He further deposed that the apartment of the parties is at 4th floor F.No.303 and that his room is at stilt. He denied the suggestion that he cannot hear the voice of the residents from 4th floor to his room. He further stated that after hearing the voices, he had gone to the 4th floor and saw that the door of apartment was closed and the parents of the petitioner were standing outside with their bags and crying; that none of the neighbours came out or took the parents of the petitioner inside their apartment; that he has taken the parents of the petitioner and asked them to sit in the chairs at the security post and that he has never taken them

inside his room on that day; that about four years from that day, his wife used to baby sit the female child of the parties and she also has never witnessed any fight or quarrels between the parties; and that he has never witnessed any one including the neighbour giving advice to petitioner or respondent.

29. From the above evidence of P.W.4, it could be seen that he is not an eye witness to any of the incidents narrated by the petitioner and hence his evidence is also of not of much use to decide on the ground of cruelty alleged by the petitioner.

30. Thus it could be seen that there is no independent witness on record to corroborate the version of P.Ws.1 to 3 with regard to the averments made by the petitioner in the affidavit filed in support of the O.P. with regard to subjecting the parents of the petitioner to cruelty. Hence, the finding of the trial court in this regard is without any basis.

31. The other allegation of the petitioner is that as the respondent is not conceiving, she is propagating that the petitioner is not fit for marital life. To prove this allegation, the learned counsel for the petitioner has taken this court through the cross-examination of P.W.1. A perusal of the cross-examination of P.W.1 shows that a suggestion was put to him by the learned counsel for the respondent that as the petitioner lost his two testicles, he is not fit for marital life and as such the respondent could not conceive. Except this bald suggestion, no scientific or medical evidence is placed on record. Thus, the suggestion put to P.W.1 on behalf of

respondent supports the case of the petitioner that respondent is subjecting the petitioner to mental cruelty by propagating that he is unfit for marital life.

32. It is to be further seen that after filing of the FCOP.No.110 of 2016 certain incidents have taken place. The Apex Court in the decision reported in VISHWANATH AGRAWAL v. SARLA VISHWANATH AGRAWAL⁷, held that subsequent events can be considered to arrive at a conclusion with regard to cruelty.

33. In the present case, the FCOP was filed during the year 2016 and after filing of the present petition, respondent has filed Cr.No.4 of 2018 on the file of Women Police Station, Khammam on 23.1.2018, Cr.No.57 of 2018 on the file of Chillakallu Police Station, Krishna District on 11.02.2018; Cr.No.61 on the file of the same police station on 15.2.2018, DVC. No.35 of 2019 and also C.C.No.4306 of 2021 on the file of Human Rights Commission, Telangana State, Hyderabad. The petitioner alleged that the respondent also lodged complaint on 7.4.2016 on the file of Osmania University Police Station. She also lodged complaint on 9.4.2016 on the file of CCS WPS, Hyderabad and also another complaint on 19.4.2016 before the Commissioner of Police, Hyderabad.

34. Further, respondent in her reply to the vacate petition, and also in the counter affidavit, stated that she filed written complaint on 21.10.2016 to the Superintendent of Police, Khammam against the petitioner.

⁷(2012)7 SCC 288

35. Thus from the above it is clear that the respondent filed number of cases and complaints against the petitioner. This circumstances, in the opinion of this court amounts to subjecting the petitioner to mental cruelty. Our view is supported by the decision of the Apex Court in **RAJ TALREJA v. V. KAVITA TALREJA**⁸, wherein it was 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.”*

36. Further it is seen that marriage between the parties was held on 10.4.1998 and that they lived together till 2010 and thereafter disputes arose and the parties are living separately and the wife filed number of criminal cases, which are already noted above, which are pending adjudication, and this court is not inclined to make any observation with regard to truth or otherwise of the said allegations, and they are subject to trial. But the fact remains that wife filed those cases, and in this appeal, she is opposing for divorce. If she is really interested in the marriage, she should have filed a petition for restitution of conjugal rights, and should have not indulged in filing series of complaints.

⁸(2017)14 SCC 194

37. In the decision reported in NAVEEN KOHILI vs. NEELU KOHILI⁹, somewhat similar facts 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 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.

⁹Appeal (Civil) 812 of 2004 dated 21.03.2006

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](#).

38. In view of the facts and circumstances of the case and in the light of the law laid down by Apex Court, as the petitioner is subjected to mental cruelty by the respondent by filing number of cases, he is entitled for a decree of divorce and the on that ground, the impugned order and decree of Trial Court warrants no interference.

39. In the reply affidavit filed by the respondent to the vacate petition filed by the petitioner, it could be seen that the respondent is seeking an amount of

Rs.5 crores as permanent alimony. The petitioner – husband is opposing the same, and submits that the respondent can file a petition under Section 25 of the Act.

40. Having regard to the facts and circumstances of the case, the impugned judgment and decree of the trial court granting decree of divorce requires to be confirmed and the appeal is liable to be dismissed.

41. With regard to maintenance and permanent alimony, it is open to the respondent to move an appropriate petition before the competent court.

42. In the result, the appeal is dismissed. Interlocutory Applications pending, if any, shall stand closed. No order as to costs.

G.SRI DEVI,J

M.G.PRIYADARSINI,J

DATE: 28 --09—2022

AVS