

THE HON'BLE JUSTICE G.SRI DEVI

AND

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

F.C.A.NOs.123 & 152 OF 2015

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

The appellant / husband in FCA.No.152 of 2015, filed O.P.No.741 of 2012 on the file of Judge Family Court at L.B. Nagar, Ranga Reddy District against the respondent / wife under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (for short 'the Act') seeking for dissolution of his marriage on 6.5.2011 with his wife.

2. The learned Trial Judge vide order and decree dated 24.01.2015 allowed the petition by granting decree of divorce in favour of the petitioner by dissolving his marriage with the respondent dated 6.5.2011, and further directed the petitioner / appellant to pay an amount of Rs.7,500/- per month to the respondent towards her maintenance on or before 10th of every month until she remarries.

3. Assailing the order of the Trial court in granting decree of divorce, the respondent in the O.P., who is the wife, filed FCA.No.123 of 2015, and the petitioner has filed FCA.No.152 of 2015 assailing the portion of the order of the Trial Court in granting monthly maintenance of Rs.7,500/- to the respondent till she remarries.

4. Since both the appeals arise out of the order dated 24.01.2015 passed by the Trial court, and the parties are common, they are heard together and are being disposed of by this common order.

5. For the sake of convenience, the parties will be referred to as per their array in the original petition.

6. **Petition Averments:** The case of the petitioner is that his marriage was performed with the respondent on 6.5.2011 at Pushpa Gardens, New Chaitanyapuri Cross Road, Dilsuknagar, Hyderabad as per Hindu Rites and Customs. Their marriage was an arranged marriage and there was no taking or giving of dowry in any manner. There were no issues out of wedlock, as their marriage was not consummated.

(i) Prior to engagement, he did not have the chance to talk to the respondent. However, at last, he got a chance on one day to have a word with the respondent through phone, and on that occasion also respondent shocked him by saying that she quarreled with her parents, and she burnt her skin, out of anger towards them. But her parents are now manipulating the same, and saying that it is a black mole.

(ii) After the marriage, the petitioner and the respondent lived together till 23.06.2011 i.e., just for 48 days after the marriage, and subsequently, the respondent deserted the petitioner without any reason and started living with her parents.

(iii) That after the marriage, the respondent joined his company and during the first night, when the petitioner approached the respondent with lot of expectations and dreams, about his new life, he was shocked to see the unbecoming behavior of the respondent, as she insisted him not to touch her, and not to treat her as his wife, as she is not at all interested in the marriage with the petitioner. Due to the said behavior of the respondent, he was put to severe mental agony and cruelty.

(iv) That on the second night also when the petitioner approached the respondent with anticipation of some positive change in her attitude, she had interacted with him and his family members for the whole day, disappointing him without any change.

(v) That after the marriage, whenever the petitioner tried to initiate for conjugal relationship, the respondent simply rejected, and said that they shall stay forever as friends and not as wife and husband. Then he asked the respondent as to why she was saying that after the marriage. The respondent openly revealed that she is not interested in such kind of relationship, and she accepted for the marriage with him due to the force of her parents, and further she went to the extent of saying that she was having dream of marrying a man who lost his wife, having two children, so that she can take care of the said children, and serve them. That the petitioner was under the impression that the respondent being new to the atmosphere of the matrimonial home, behaved like that, and that after some time, things may be settled.

(vi) That the petitioner was trying to forget about the above incidents, hoping positive change in the behavior of the respondent, and that it will be conducive for consummating the marriage, but the respondent adding fuel to the fire, started narrating about her past life. She stated about her boyfriends, and that she used to always compare the petitioner with them, and she used to repent by saying that she had committed mistake in not accepting the love proposals made by her boyfriends during her college life, otherwise her life would have been colourful. Further, taking the advantage of his calm going attitude, the respondent used to engage with her boyfriends on mobile, and on internet, for hours together in the late nights without showing any care and concern towards the petitioner.

(vii) That on account of the above acts of the respondent, the petitioner was subjected to severe mental cruelty and torture. In spite of the above, he has been trying to counsel the respondent by advising her to forget about her college life, and that everybody has such memories in his or her life and requested her to cooperate with him to lead happy marital life. He also promised her by saying that he would take care of her in all aspects as a loving husband and that he will put all his efforts to live up to her expectations. But his efforts proved futile, as respondent continued the same attitude thereby subjecting him to mental torture.

(viii) The further case of the petitioner is that prior to the marriage, the parents of the respondent informed him and his parents that respondent has completed her B.Tech., and was working in some private company and she wants to continue the said job even after the marriage. He and his parents accepted for the same.

(ix) That few days after the marriage, respondent started leaving the house under the guise of going to her job, which the petitioner believed. However, after some days, the petitioner observed that the respondent used to leave the house in early hours and used to come back in late nights. Initially, he thought that due to the pressure of work on account of leave availed by her for the marriage, she is leaving early and coming late in the nights. But when the said course of action of the respondent continued for two weeks, he asked her about the whereabouts of the company where she works. To his utter surprise, respondent was not inclined to give any reply. When he insisted her to answer the same, she turned violent, and said that she is going to resign her job. On the next day morning, she left the house stating that she is going to office, and came back in the evening, and stated that she has resigned to her job. That when he asked her to inform the name and address of the company where she was working, the respondent, without any hesitation, or remorse, stated that she was not working anywhere and she was just going to meet her boyfriends, and her parents, and spending time with them until night and returning in the night. That he did not take the same seriously, and was trying to forget the same, and advised the respondent to

change her attitude and cooperate with him for happy marital life. But there was no change in her attitude even after one month, so he started losing hope of any improvement in the attitude of the respondent.

(x) That vexed with the attitude of the respondent, the petitioner brought the fact of non-consummation of his marriage with the respondent, to the notice of the elders of both the families, and the non-cooperation on the part of the respondent for the same. Then the mother of the petitioner called the parents of the respondent and conducted a meeting to settle the things. Coming to know about the said behavior and attitude of the respondent, her parents reprimanded her, and counselled her as to how to lead marital life, and to behave like a dutiful wife of the petitioner. That, from the body language of the parents of the respondent, petitioner observed that they were aware of the said attitude of the respondent right from her childhood.

(xi) That the parents of the respondents apologized to him and his mother and requested them not to take any adverse steps against the respondent. They also asked for one month time for counselling the respondent and settle the things right. After the said counselling, respondent was normal and behaved smoothly with the petitioner and his parents only for a couple of days, and during the said two days also, there was no consummation of the marriage, as respondent avoided cohabitation. Respondent started insulting and harassing the mother of the petitioner, who is a widow, in a

ruthless manner, though he and his mother have shown love and affection towards her, as she is only daughter-in-law of their family.

(xii) That the respondent started finding fault with all his activities and she used to pick up quarrels with him on trivial issues. When he and his mother tried to advise the respondent about the importance of the consummation of the marriage, she shouted at them in high pitch and abused them in bad language.

(xiii) That respondent not satisfied with her approach of torturing the petitioner mentally, started harassing him physically by picking up quarrels with him and she has never shown any love and affection towards him and his mother. That he tolerated all the above cruel behavior and attitude of the respondent hoping change, but the same proved to be in vain.

(xiv) That ultimately the respondent deserted him on 23.06.2011 i.e., within a short period of 1 ½ months from the date of the marriage, and started living at her parents house, without any reason or provocation on the part of the petitioner. He lost all his hopes of happy married life with the respondent. There is no scope of reconciliation. His best efforts for the same, proved futile. Their marriage is irretrievably broken down. Therefore, he filed the present petition under Section 13(1)(ia) of the Act seeking for dissolution of his marriage on 6.5.2011 with his wife.

7. Averments in the counter affidavit: Respondent / wife filed counter affidavit and specifically denied all the allegations made by the petitioner. The respondent admitted her marriage with the petitioner, but submitted that at the time of marriage, her parents gave Rs.30 lakhs cash, 30 tulas of gold, 2 kgs. of silver, and household articles towards dowry to the petitioner as per the demand of his mother – Padmavathi, maternal aunt – T.Shanti, her daughter – Madhavi, son – T.Ananth, and their family friend – Krishnam Raju. The above said amounts and articles were given to these persons and the petitioner, before the presence of the elders.

(i) That after the marriage, she joined her husband at his house in N.G.Os. colony, Vanasthalipuram. They led happy marital life for about 20 days. Their marriage is consummated, as such the allegation that their marriage is not consummated is false. She co-operated for consummation, as such the allegation that she did not cooperate for consummation of the marriage is false.

(ii) That after twenty days of the marriage, the petitioner left for Bangalore. That she asked him when he would take her to Bangalore. That the petitioner stated that he was searching for a job to her, and till that time, she had to stay with her mother-in-law. On weekends i.e., on a Saturdays and Sundays, he used to come, and they used to spend quality time with each other. That for about three months, everything went on well. Thereafter, troubles started in the form of her mother-in-law and her sister – Shanthi.

By hearing their words, her husband. i.e., the petitioner herein, used to harass her both mentally and physically.

(iii) That in the absence of her husband, her mother-in-law, her sister - Santhi, and the said sister's daughter and son viz., Madhavi and Ananth and his wife Kanthi and his family friend Raju used to harass the respondent both mentally and physically demanding her to bring additional dowry of Rs.20 lakhs, to allow the petitioner to lead the marital life with her, otherwise, they would see her end. That the petitioner and the above stated persons would say that the petitioner would get dowry of rupees more than one crore, and all of them tortured her physically and mentally, with a view to get rid off her.

(iv) That while the things stood thus, the parents of the respondent came to her matrimonial house on 15.09.2011, which is her birth day, but her husband became wild and abused her, and her parents, and stated that with what face they came without bringing additional dowry of Rs.20 lakhs, and assaulted her indiscriminately with hands and legs in their presence. That later, he left her at her parents house forcibly. She and her parents went to her in-laws house, which was found locked and there was nobody. When she called her husband, he did not answer, and he changed his mobile number.

(v) That thereafter her parents went to her in-laws house to invite the petitioner on the eve of Dasarra festival, but her husband put a condition that if additional dowry of Rs,.10 lakhs is given, then only he would come, otherwise, he will not. Therefore, her

parents and elders, on number of occasions tried to pacify the issue, but the same proved futile, as there is no change in the attitude of the petitioner. Having come to know about the adamant attitude of the petitioner and the above stated persons, the paternal uncle of the petitioner by name Ganta Veerabhadram and his wife took her (respondent) to her in-laws house along with her parents on 09.06.2012. The moment they entered the house, her husband and his mother abused them in filthy language and questioned how they came without bringing additional dowry. The mother of the petitioner called her sister Santhi, who came along with her family friend Krishnam Raju, her son Ananth, her daughter-in-law Kanthi and daughter Madhavi, and they all pushed them out of their house by threatening with dire consequences, and stating that they would be eliminated if respondent continues in the matrimonial house, and they also assaulted her and others. Her husband rushed to the police station against them. However, after hearing them, police, on her report, registered FIR No.84 of 2012 against the above named persons under Sections 498-A, 504, 506 IPC and Sections 3 and 4 of Dowry Prohibition Act, 1961. That police tried to counsel her husband, mother-in-law and others, but the petitioner bluntly refused to accept her. That even today she is ready to join with the petitioner and lead marital life with him. The petitioner has failed to prove his case, as such, his petition for divorce is liable to be dismissed.

(vi) The further case of the respondent is that she never went for any employment and she is not doing any job at present and earning anything. She is solely

depending on her parents for everything. Petitioner is a Software Engineer in EMC Data Storage Systems India Pvt., Ltd., and earns more than Rs.1,00,000/- per month. He also gets a sum of Rs.20,000/- towards rents. His mother is working in the office of Director of Health in Hyderabad. Petitioner has no other obligations. He has neglected and refused to pay any maintenance to her. She is starving for her maintenance.

(vii) That petitioner being her husband is obligated to provide maintenance to her. She is incurring Rs.25,000/- per month. She is moving another application claiming maintenance and legal expenditure. She is reserving her right to move under Domestic Violence Act for residence order, protection order etc.

(viii) The further case of the respondent is that she was always cordial with petitioner in all aspects including consummation of marriage. That she attended to all the works in the matrimonial house, though her husband is in Bangalore. She used to stay with her mother-in-law and did services to her. That, due to her mother-in-law and her sister, her marital life is ruined. That she never deserted him but on the other hand, petitioner forcibly left her at her parent's house. She is still looking forward to join with the petitioner unconditionally. Eventually she sought to dismiss the petition for divorce.

8. Based on the above pleadings, the Trial Court framed the following issues for consideration:

1. Whether the marriage of the petitioner with the respondent is not consummated due to the non-cooperation of the respondent?

2. Whether the respondent has subjected the petitioner to cruelty as alleged by him?
3. Whether the respondent has deserted the petitioner?
4. Whether the matrimonial relationship between the petitioner and the respondent is irretrievably broken down?
5. Whether the petitioner is entitled for decree of divorce as prayed for?

9. In support of the case of the petitioner, P.Ws.1 to 4 were examined and Exs.P-1 to P-3 were marked. On behalf of the respondent R.Ws.1 to 4 were examined and Exs.R-1 to R-9 were marked.

10. Appreciating the entire evidence both oral and documentary, the Trial Court, vide the impugned order and decree, answering all the issues in favour of the petitioner, allowed the petition and granted divorce, and further directed the petitioner to pay monthly maintenance of Rs.7,500/- to the respondent until she remarries.

11. Assailing the order of the Trial Court in granting decree of divorce, wife filed FCA.No.123 of 2015, and assailing the order of the Trial Court in granting maintenance, the husband filed the other appeal in FCA.No.152 of 2015.

12. This court, on 23.04.2015, while admitting the appeal filed by the respondent in F.C.A.No.123 of 2015, granted interim suspension as prayed for.

13. Vide interim order dated 3.12.2019 in FCA.No.123 of 2015 this court has referred the parties to Mediation Centre for reconciliation. The Mediation and Arbitration Centre vide report dated 2.1.2020 informed the court that mediation has

been unsuccessful. As the mediation ended in failure, this court vide interim order dated 23.01.2020 directed the parties to argue the case on merits.

14. Further, this court vide order dated 4.1.2022 in FCA.MP.No.191 of 2015 in FCA.No.123 of 2015, taking the facts and circumstances of the case into consideration, granted eight equal monthly instalments for payment of arrears. The said order, for better appreciation, is extracted as under:

“Heard the learned counsel for both the parties.

Parties are present, but they could not settle the matter. In view of the same, the appeals are to be heard.

Learned counsel for respondent – husband submits that the court below, without any evidence, granted interim maintenance of Rs.7,500/- per month. It is submitted that through the respondent – husband is living in USA, in view of Corona pandemic and because of several cases filed against him, he lost his job and is now working in petrol filling stations, and that after deducting his monthly expenses, he is not able to save any amount.

On the other hand, learned counsel for the appellant – wife submits that the court below, after considering the evidence on record and after seeing the financial status of both the parties, granted meagre amount of Rs.7,500/- per month.

In this case, it is to be seen that admittedly, the respondent – husband is residing in USA and the court below, after considering the evidence of both parties, granted an amount of Rs.7,500/- per month as interim maintenance pending the O.P. However, because of the interim order inadvertently obtained by the appellant – wife in FCA. No.123 of 2015, the respondent – husband has not paid the maintenance.

It is to be seen that as on date, Rs.7,500/- will be equivalent to hardly 100 US dollars and because of the interim suspension obtained by the appellant – wife inadvertently, the respondent-husband is enjoying the said interim order in his favour.

Keeping in view the facts and circumstances of the case, prima facie we are of the opinion that the appellant – wife is entitled to maintenance of Rs.7,500/- per month along with arrears from the date of order of the trial court. But, however, the respondent – husband is granted eight (08) equal monthly instalments for payment of arrears. The arrears of maintenance from the date of the order of the trial court till January, 2002, and the regular maintenance amount from February, 2022, shall be paid on or before 10th of every month.

The respondent – husband shall deposit the regular maintenance amount as well as arrears into the Bank account of the appellant – wife and the appellant – wife shall furnish the details of her Bank account to the respondent – husband as well as to the counsel for the respondent.”

15. This court on 10.03.2022 again tried to settle the matter amicable and on the said date passed the following docket order:

“Heard learned counsel for the appellant and learned counsel for the respondent.

Appellant is present in the court. After interacting with her, she stated before this court that she is suffering a lot and her family incurred lot of expenditure for performing the marriage and also for fighting litigation and ultimately, she stated that if she gets not less than Rs.50.00 lakhs towards permanent alimony, apart from gold, silver and other articles worth Rs.6.00 to rs.7.00 lakhs, she may agree for settlement.

On the other hand, learned counsel for the respondent submits that because of the appellant / wife, the respondent / husband has to lose his job, travel to India for attending several cases, which are foisted by the appellant / wife; has to spend substantial amount towards monthly maintenance and that he is willing to pay another Rs.15.00 lakhs apart from the arrears already paid and she seeks time for contacting respondent / husband. She also submits that the respondent / husband may be permitted to appear through virtual mode.

In view of above facts and circumstances, we are of the opinion that presence of the parties is necessary.

Since, the respondent / husband is in United States of America, he is permitted to appear through virtual mode at 2.30 p.m. on 24.03.2022. The appellant / wife shall also present on that day physically.

List this matter on 24.03.2022 at 2.30 p.m.”

16. Subsequently, as the parties could not settle the matter, this court has taken up the appeals for disposal on merits.

17. Sri N.Ravi Prasad, learned counsel for the respondent / wife submits that only on the ground that the marriage has not been consummated, the Trial Court has granted the decree of divorce. He submits that for arriving at the conclusion that marriage has not been consummated, the Trial Court has relied on the solitary testimony of PW.1, who is the petitioner, and no scientific evidence has been adduced

by the petitioner. He submits that the other witnesses relied on by the Trial Court are interested witnesses and hence no reliance can be placed. He further submits that the consistent version of the respondent in her averments made in the counter affidavit filed before the Trial Court, and also in her chief examination and in her cross-examination, is that marriage has been consummated, but the same has not been taken into consideration by the Trial Court.

(i) Learned counsel for the respondent / wife further submits that there is no desertion by the respondent – wife, and on the other hand she was forced to leave the company of the husband, and hence ‘desertion’ cannot be attributed to the wife, but this aspect has not been properly appreciated by the Trial Court.

(ii) He further submits that as the respondent – wife was subjected to harassment by the petitioner – husband and his family members, to assert her right, she has taken legal recourse of lodging report under Section 498-A of IPC and Sections 3 and 4 of the Dowry Prohibition Act, 1961, and she also filed domestic violence case. These incidents cannot be taken as subjecting the petitioner to mental cruelty, and no decree of divorce can be granted on the above circumstances.

(iii) Learned counsel submits that no prior notice was issued before filing the petition for divorce and this aspect has not been considered by the Trial court.

(iv) Learned counsel further submits that even now the respondent – wife is willing to join her husband unconditionally and further she is unable to maintain herself.

(v) Furthermore, learned counsel for the respondent has submitted that the respondent earns a meager monthly salary of Rs.5,000/- and she has to take care of her aged parents, whereas the petitioner is working as a Senior Architect in USA and earns a salary of Rs.6,00,000/- per month and has no other obligations and his mother is also a Government employee, and, therefore, seeks for a direction to grant an amount of Rs.1,00,000/- per month as maintenance. For the said relief, the respondent – wife filed I.A.No.1 of 2022 in FCAMP.No.191 of 2015 in F.C.A.No.123 of 2015.

18. On the other hand, Smt. M.Venkateswari, learned counsel for the petitioner – husband supporting the impugned order and decree of the trial court sought to dismiss the appeal filed by the respondent – wife. She submits that there is no evidence led by the respondent – wife for awarding maintenance. She submits that the respondent is a B.Tech. and an LL.B. graduate, and her parents are having sufficient income and they are also having immovable properties both in Andhra Pradesh and Telangana States, and the respondent is able to maintain herself and hence no maintenance can be granted. She also submits that the marriage is irretrievably broken-down and hence this court may confirm the order and decree passed by the Trial court in granting decree of divorce, and that the order of the Trial Court in granting maintenance may be set aside.

19. In view of the facts and circumstances of the case, and the above rival contentions of both the counsel, the issue that arises for our consideration is whether the impugned order and decree of the Trial Court warrants any interference?

20. From the averments made in the petition, it could be seen that the petitioner has sought for a decree of divorce mainly on the ground of non-consummation of marriage. His further case is that the respondent left the matrimonial house without any valid reason. Therefore, he is seeking the divorce on the ground of 'cruelty' and 'desertion'.

21. On the other hand, the case of the respondent is that marriage between them was consummated and that her parents gave dowry and other articles, stated in the counter affidavit, and that for additional dowry, the petitioner and his mother and other stated persons in the counter affidavit harassed her both physically and mentally, and forced her to leave the matrimonial company of the petitioner, and though she tried to join the petitioner, she was not allowed, and as such, for the harassment meted out at the hands of the petitioner and his mother and other relatives of the petitioner, whose names are stated in the counter affidavit, respondent filed criminal case for the offence under Section 498-A IPC and under Section 3 and 4 of the Dowry Prohibition Act, 1961, and she also filed Domestic Violence Case, and availing legal remedies to assert her rights, and to protect her from harassment, and these circumstances, cannot be treated as subjecting the petitioner to 'cruelty'. With these averments, she sought to

dismiss the divorce petition and, she also sought this court to enhance maintenance granted by the trial court @ Rs.7,500/- per month to Rs.1,00,000/- per month as the petitioner is working as Architect in USA and earning an amount of Rs.6,00,000/- per month as per Indian currency and on the other hand, she has to take care of his aged and ailing parents, and that she is unable to maintain herself.

22. Now it is required to be examined whether both the parties could prove their respective cases based on evidence, and whether the findings arrived at by the trial court warrant any interference?

23. The main case of the petitioner is that the marriage was not consummated, and on the contrary, the case of the respondent is that the marriage has been consummated.

24. It is to be noticed that consummation of a marriage is a personal affair of the parties and court cannot expect any ocular evidence and the same has to be proved by adducing any scientific or medical evidence. For example, if there are any children out of wedlock, it goes without saying that marriage is consummated. In the present case, admittedly the parties have no children, and further the parties also did not produce any medical evidence to prove their respective case. Therefore, this court has no other go except to scrutinize the oral evidence adduced by both the parties, and to record a finding in this regard, and also to consider whether the findings arrived by the court

below in this regard are based on evidence, and whether such findings require any interference.

25. The petitioner was examined as P.W.1. He filed his chief examination affidavit reiterating the averments made in the O.P., stating that non-consummation of his marriage with the respondent was due to her non-cooperation and adamant attitude and that he was subjected to lot of mental agony and harassment by the respondent. He was cross-examined at length, but his evidence is un-shaky and nothing contrary to his chief examination could be elicited. At one stage, a suggestion was put to P.W.1 in his cross-examination by the counsel appearing for the respondent, that in spite of respondent's cooperation in all aspects, ***the consummation did not take place***. Though respondent asserts that marriage was consummated, the above suggestion put to P.W.1 by her counsel, totally demolishes her case, and probablises the case of the petitioner that marriage was not consummated.

26. Now the next issue that requires to be considered is who is at fault for non-consummation of the marriage. P.W.2 is her mother-in-law's sister's daughter-in-law, and she is of same age group of the respondent, and P.W.4 is the neighbor of the petitioner. The evidence throws light on the above issue.

27. Here the contention of the learned counsel for the respondent is that P.W.2 is the relative of the petitioner, and P.W.4 is the neighbor of the petitioner, and hence

they have to be treated as interested witnesses and hence cannot be relied upon. This contention cannot be countenanced. The Apex Court in the decision reported in ***VISHWANATH AGARWAL v. SARLA VISHWANATH AGRAWAL***¹ while considering the evidentiary value of the interested/related witnesses, held that in matrimonial dispute, it would be inappropriate to expect outsiders to come and depose and that family members and sometimes the relatives and friends, and neighbours are the most natural witnesses and that the veracity of their testimony is to be tested on objective parameters, and not to be thrown overboard on ground that witnesses are related to either spouse.

28. Thus in light of the above law laid down by Apex Court, the evidence of P.W.2, and also the evidence of P.W.4, who is the neighbor, cannot be thrown overboard, and their evidence has to be tested on objective parameters.

29. From a perusal of the evidence of P.W.2, it could be seen that the family of P.W.1 and her family reside in the same colony and that the respondent used to visit her regularly, as they belong to the same age, and that they used to talk to each other and share their feelings. P.W.2 deposed that she observed that respondent being a young lady is dull and inactive, and so she asked her about the same for which the respondent expressed that she is not interested in leading marital life. P.W.2 further deposed that due to the abnormal, irresponsible and adamant behavior of the respondent, the

¹(2012)7 SCC 288

matrimonial life of P.W.1 and the respondent is strained to a maximum extent that led to mental agony and depression not only to P.W.1, but to all the members of their family. Though P.W.2 was cross-examined at length, her evidence is consistent and unshaken.

30. P.W.4 is the neighbor of P.W.1 and he is not related to anybody and thus he is an independent witness and as per his evidence he participated in the marriage celebrations of P.W.1. He deposed that after the marriage within three weeks, there was a talk in the colony that the marriage life of P.W.1 and the respondent is not going smoothly. That it came to his knowledge through colony people that respondent is quarrelling and shouting and behaving abnormally with P.W.1 and his family members. That, to his utter shock and surprise, that on one day in the mid night, he heard the respondent shouting loudly and abusing the family members of P.W.1 in filthy language by standing in the colony. That immediately, he rushed to P.W.1's maternal aunt's house where he saw the respondent calling all the colony people by abusing P.W.1, his mother, his maternal aunt and their families. That, when he tried to know the reason for her aggressive behavior and requested to come to the house and settle the issue in amicable manner, she refused and misbehaved with him by asking him to go out of the issue.

31. The evidence of P.W.4 further shows that on 09.06.2012 he received a call from Women Police Station Saroornagar informing about the arrested of P.W.1. He immediately rushed to the Police Station where the Station Officer conducted reconciliation and the respondent told the C.I. of police that the marriage between her and P.W.1 is not consummated, and that her marriage was performed with P.W.1 forcibly.

32. A perusal of the cross-examination of P.W.4 shows that it is consistent and nothing contrary to his chief examination could be elicited by the counsel for the respondent.

33. Further, a perusal of evidence led on behalf of the respondent shows that no tangible evidence was placed before the court with regard to consummation of the marriage. In their evidence, they mainly deposed with regard to alleged presentation of articles and dowry given to the petitioner. Thus, their evidence on the present issue of consummation of marriage is not of much use to the respondent.

34. As already noted above, the suggestion put to P.W.1 in his cross-examination with regard to non-consummation of marriage, makes the evidence led on behalf of the respondent futile on this aspect.

35. Thus, on consideration of the evidence of P.Ws.1, 2 and 4, it is clear that the petitioner has proved that his marriage with the respondent was not consummated due to non-cooperation of the respondent.

36. The Apex Court in the decision reported in **PARVEEN MEHTA v.INDERJIT MEHTA**², while considering the matrimonial offences and mental cruelty, held that person enjoying normal health, being deprived of normal cohabitation by spouse and thus undergoing anguish and frustration could be said to have been subjected to 'mental cruelty'.

37. In the present case also, as per the cause title P.W.1. is aged about 32 years and there is no material on record that he is suffering from any ailment, and hence it has to be taken that he is hale and healthy, and his marriage was performed with the respondent on 06.05.2011, and as per the evidence on record, he could prove that the marriage between the parties could not be consummated because of the non-cooperation of the respondent – wife. Hence, as per the law laid down by the Apex Court in the decision cited two supra, the respondent subjected the petitioner to 'mental cruelty'. The finding of the trial court in this regard does not warrant any interference.

²(2002)5 SCC 706

38. The other allegations of the respondent against the petitioner is that her parents gave Rs.30 lakhs of cash, 20 tulas of gold and 2 kgs of silver to the petitioner towards dowry on his demand and also on the demand made by his mother, her sister's family. She further alleged that petitioner, his mother and her sister's family and that family friend Krishnam Raju harassed her demanding Rs.20 lakhs as additional dowry. Her further case is that for the said additional dowry, the above stated persons harassed her both physically and mentally.

39. The Trial Court on scrutiny of evidence found that there are material contradictions in the testimony of R.Ws.1 to 4 with regard to the allegation of giving of alleged dowry and the other items stated by the respondent. Further the respondent also failed to prove her allegations, by producing any tangible evidence. She also failed to prove the source of income of her father for paying the said huge amounts, gold and silver, since he is found to be running a ration shop belonging to his handicapped sister.

40. The other allegation of the respondent is that on 15.09.2011 when her parents came to the house of P.W.1 to invite them to their house as that day happened to be the birthday of the respondent, petitioner abused her and her parents in filthy language by saying that with what face they came to their house without bringing Rs.20 lakhs additional dowry and further P.W.1 beat her before her parents with hands and legs, and forcibly dropped her at her parents' house.

41. A perusal of the cross-examination of R.W.1 shows that the counsel for the petitioner asked the respondent as to means of transport i.e., by which means the petitioner, dropped her at her parents' house, respondent answered by saying 'by means of car'. But in the cross-examination of P.W.1 it was suggested to him that on 23.06.2011 respondent left his company by informing him. Thus, a comparison of the above evidence of P.W.1 and the cross-examination of R.W.1, it clearly shows that there is contradiction as to how the respondent left the house of the petitioner.

42. Further, though the respondent alleged physical and mental harassment, she did not mention as to when and where, and by which mode she was subjected to harassment for bringing additional dowry of Rs.20 lakhs, and she also did not file any complaint with regard to the said allegations immediately, though the same was filed only after filing of the divorce petition by the husband.

43. From the material on record it could be seen that the respondent filed a criminal case against her husband, mother-in-law and others under Sections 498-A, 504 and 506 IPC and Sections 3 and 4 of the Dowry Prohibition Act, which was registered as FIR. No.84 of 2012. Further, she also filed DVC. No.5 of 2014 on the file of XI Metropolitan Magistrate Court, Cyberabad against the petitioner and others. R.W.4 is the maternal uncle of the respondent, and in his cross-examination stated that *"off the record, the petitioner was in police station for two days, but as per law, he must be*

produced before the court within 24 hours.” Based on this specific evidence of R.W.4, the trial court found that the same probablises the version of the petitioner that by political clout, respondent got him detained in police station illegally for three days. As already noted above, respondent admitted to have field the above cases against the petitioner and his family members.

44. A Division Bench of this court in ***P.PADMA v. P. CHENNAIAH***³, 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. The Division Bench, considering the facts and circumstances of the case therein, did not interfere with the order of the trial court in allowing the HMOP filed by the husband and grating decree of divorce.

45. Therefore, on thorough scrutiny of all the facts and circumstances and the evidence on record, the Trial Court recorded finding of fact that marriage between the parties is not consummated because of the non-cooperation of the respondent – wife, and further the wife also could not prove the allegations leveled against the petitioner and his family members, and it is also found that the petitioner is subjected to ‘mental cruelty’, and that petitioner is entitled for divorce, and accordingly allowed the petition filed under Section 13(1)(ia) of the Act. On re-appreciation of the entire facts and

³2022(1) ALD 103 (TS)(DB)

circumstances of the case, we do not find any reason to interfere with the well considered order of the trial court.

46. Coming to the aspect of monthly maintenance, the Trial Court granted an amount of Rs.7,500/- per month until she remarries.

47. It is well settled that even a divorced wife, if she is unable to maintain herself, is entitled to seek for maintenance.

48. The facts on record show that the respondent is a graduate in engineering as well as in a law, and as per her case she is working as a Junior Advocate and receiving an amount of Rs.5,000/- per month.

49. Having regard to the facts and circumstances of the case, we do not find any reason to interfere with the quantum of maintenance granted by the trial court.

50. Thus, having regard to the facts and circumstances of the case, and for the foregoing reasons, the impugned order and decree of the trial court does not warrant any interference, and both the appeals are devoid of any merits, and are liable to be dismissed. The point is answered accordingly.

51. In the result, both the appeals are dismissed, confirming the impugned order and decree of the trial court.

52. 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