

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

**FAMILY COURT APPEAL Nos.85 AND 130 OF 2010**

**COMMON JUDGMENT** (Per Hon'ble Dr. Justice Shameem Akther)

Since the facts and issues involved in these cases are identical, both these Family Court Appeals are being disposed of by way of this common judgment.

2. Family Court Appeal Nos.85 and 130 of 2010, under Section 19 of the Family Courts Act, 1984, are filed by the appellant/husband, challenging the common order and decree, dated 23.12.2009, passed in FCOP Nos.850 of 2006 and 956 of 2007 by the Judge, Family Court, Hyderabad, respectively, whereby, FCOP No.850 of 2006 filed by the respondent/wife under Section 9 of the Hindu Marriage Act, 1955, (for short 'the Act') for restitution of conjugal rights, was allowed directing the appellant/husband to take back the respondent/wife to her matrimonial home along with their minor daughter to lead happy marital life; and FCOP No.956 of 2007 filed by the appellant/husband under Section 13(1)(ia)(ib) of the Act, for dissolution of marriage performed between the appellant/husband and the respondent/wife on 27.11.1996, was dismissed.

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

4. After service of notice, the respondent/wife was pleased to engage an Advocate, Sri D.Vathsalendra. Sri D.Vasthalendra, who filed vakalat on behalf of the respondent/wife, reported no instructions from the respondent/wife. Therefore, this matter was posted today under the caption "for orders". Even then, there is no representation on behalf of the respondent/wife.

5. Learned counsel for the appellant/husband would contend that a false criminal case in Crime No.129 of 2006 of Suryapet Police Station under Section 498-A of IPC was filed against the appellant/husband, his mother, sister and brother, who is residing in USA and against two of his cousins alleging dowry harassment and cruelty. However, the said criminal case ended in acquittal. There are several other acts of cruelty meted out by the appellant/husband and his family members at the hands of the respondent/wife. Though there is ample evidence on record to dissolve the marriage in between the parties, the Court below did not allow the divorce application and erroneously dismissed the same. Without there being any justifiable cause or evidence, the application seeking restitution of conjugal rights filed by the

respondent/wife was allowed, which is contrary to law and facts of the case and ultimately prayed to allow dismiss FCOP No.850 of 2006 filed by the respondent/wife seeking restitution of conjugal rights and allow FCOP No.956 of 2007 filed by the appellant/husband seeking divorce.

6. In view of the above submissions of the learned counsel for the appellant/husband, the points that arise for determination in both these appeals are as follows:

- 1. Whether the acts of the respondent/wife constitute cruelty so as to dissolve the marriage in between the parties?**
- 2. Whether the common order and decree, dated 23.12.2009, passed in FCOP Nos.850 of 2006 and 956 of 2007 by the Judge, Family Court, Hyderabad are liable to be set aside?**

**POINTS:**

7. There is specific evidence on record to show that a case in Crime No.129 of 2006 of Suryapet Police Station for the offence under Section 498-A of IPC was registered against the appellant/husband, his mother, sister, brother and his two cousins. The said case ended in acquittal. The marriage in between the parties was performed on 27.11.1996 and the subject O.P. for dissolution of marriage was filed in the year 2007. As per the evidence adduced on behalf of the appellant/husband, the

respondent/wife is living separately from the appellant/husband from February, 2003. Thereafter, there are no efforts from the side of the respondent/wife to join the company of the appellant/husband. Furthermore, in the year 2006 itself, the aforementioned criminal case was registered, which made the relations in between the parties strained. Thereafter, the appellant/husband and his family members were put to criminal trial, which subsequently ended in acquittal, according to the learned counsel for the appellant/husband. The evidence adduced on behalf of both sides substantiate that there is no possibility of reunion in between the parties. Admittedly, the parties are living separately from 03.06.2003. There are no chances of reunion in between the parties. Furthermore, there are no efforts from either side to reunite and cohabit again. Filing of a criminal case against the appellant/husband and his family members and putting them on criminal trial would certainly amounts to physical and mental cruelty. The acts of the respondent/wife had further widened the gap in between the parties by initiating criminal proceedings. It also made chances of reunion weak. Under these circumstances, we feel that the differences between the parties to the litigation are of such magnitude that it would be practically impossible for

them to reunite and cohabit again. Further, there is long desertion by the respondent/wife.

8. Be that as it may. It is an undisputed fact that due to irreconcilable differences, the parties are living separately from the last two decades. Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. In the instant case, we feel that the differences between the parties to the litigation are of such magnitude that it would be practically impossible for them to reunite and cohabit again.

9. Here, it is apt to state that irretrievable breakdown of marriage by itself is not a ground for divorce under the Hindu Marriage Act, 1955. But where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the Courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others, necessitating severance of marital tie. A marriage, which is dead for all purposes, cannot be revived by the Court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up, there is

hardly any chance of their springing back to marital life on account of artificial reunion created by the Court's decree. Courts can dissolve a marriage as irretrievably broken down when the Court is convinced beyond any doubt that there is absolutely no chance of the marriage surviving and it is broken beyond repair.

10. In **Naveen Kohli v. Neelu Kohli**<sup>1</sup>, a three-Judge Bench of the Hon'ble Apex Court observed as follows:

"Once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised that the matrimonial bond is beyond repair. The marriage becomes a fiction, though supported by a legal tie. By refusing to sever that tie the law in such cases does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties.

11. The Hon'ble Apex Court, in a series of judgments, has exercised its inherent powers under Article 142 of the Constitution of India for dissolution of a marriage where the Court finds that the marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law on which, the divorce could be granted (see **Samar Ghosh Vs. Jaya Ghosh**<sup>2</sup>; **Sukhendu Das Vs. Rita Mukherjee**<sup>3</sup>).

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<sup>1</sup> (2006) 4 Supreme Court Cases 558

<sup>2</sup> (2007) 4 Supreme Court Cases 511

<sup>3</sup> (2017) 9 Supreme Court Cases 632

12. In the instant case, since the appellant/husband successfully proved physical and mental cruelty and further the marriage between the parties is emotionally dead, totally unworkable, beyond salvage and has broken irretrievably as discussed above, we deem it appropriate to dissolve the marriage between the parties by granting a decree of divorce.

13. Accordingly, the common order and decree, dated 23.12.2009, passed in FCOP Nos.850 of 2006 and 956 of 2007 by the Judge, Family Court, Hyderabad, are set aside. FCOP No.850 of 2006 filed by the respondent/wife stands dismissed and FCOP No.956 of 2007 filed by the appellant/husband stands allowed and the marriage performed between the parties on 27.11.1996 shall stand dissolved by a decree of divorce.

14. In the result, both the appeals are allowed.

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

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**Dr. SHAMEEM AKTHER, J**

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**NAGESH BHEEMAPAKA, J**

Date: 15.11.2022  
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