

THE HON'BLE JUSTICE G. SRI DEVI

AND

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

F.C.A.NO.134 OF 2021

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

The appellant herein is the wife of the respondent. The respondent filed FCOP.No.747 of 2018 on the file of the Principal Family Court at Secunderabad under Section 13(1)(ia)(ib) of the Hindu Marriage Act, 1955 seeking decree of divorce. The Trial Court vide order and decree dated 07.10.2021 allowed the petition without costs, thereby dissolving the marriage of the petitioner with the respondent solemnized on 22.04.2004. The Trial Court directed the petitioner to keep an amount of Rs.5,00,000/- in fixed deposit in any nationalized bank in the name of the minor child till he attains majority. Assailing the said order and decree, respondent – wife filed the present appeal.

2. For the sake of convenience, the parties will be referred to as per their array in the FCOP i.e., the appellant herein who is the wife, will be referred to as the respondent, and the respondent, who is the husband, will be referred to as the petitioner.

3. **Petition averments**: The case of the petitioner – husband is that his marriage with the appellant was solemnized on 22.4.2004 at 61, Defence Enclave, Boh road,

Ambala Cantt, Ambala, Haryana. That it is their love-cum-arranged marriage. They begot a boy child out of their wedlock on 31.10.2011. Their marital life was smooth for few months and thereafter the respondent - wife was found always busy with phone calls of her parents and relatives and she hardly spent time with the petitioner. That all her day-to-day activities were managed by her parents and whenever the petitioner tried to convince, the parents of the respondent and the respondent, never heeded to his words. Both the petitioner and respondent being army officers, were never posted together, and the respondent used to spend most of her time with her parents and the petitioner used to visit during his leave period.

(i) That in spite of the petitioner adjusting with the behavior of the respondent, the respondent always tried to make fun of the flaws in the petitioner, before others, which attitude lowered his image in the eyes of the relatives and the other family members. The petitioner was always taking care of entire family expenditure, and also used to shop for the respondent's needs and necessities, even though the respondent was a salaried army official. That the respondent did not even disclose the quantum of her salary and spent her salary for herself. That the respondent whenever gets leave, she used to spend all her leave in her sister's place and roam around places with parents. While the petitioner was always taking care of the family necessities and make purchases of the amenities required for their living including the buying of high rated car for the comfort of the respondent, but the respondent never reciprocated the gestures

of love by him towards her. After all the best efforts put in by the petitioner since 2006 in convincing the respondent for having a child, they ultimately begot a boy child, born through artificial reproductive techniques on 31.10.2011.

(ii) That after the birth of the child, all the relatives and family members poured in gifts in the form of money for the child which money was pooled up into a corpus fund of Rs.3,5 lakhs and the respondent opened an account in the name of minor child in HDFC bank and had deposited the said amount in the name of the child. Surprisingly, the petitioner found that the respondent had withdrawn the amount and invested the same in buying a property in Pune, in 2016. The petitioner having felt guilty of using child's money, decided to deposit the amount and replenished the corpus fund in the account again. In the month of July, 2017, the petitioner received an email from the bank stating that the respondent had given orders to declare the name of her sister Deepti Atri as the nominee of the HDFC bank account and when the petitioner questioned the respondent, she started throwing tantrums and making emotional blackmail. Seeing the situation, petitioner himself compromised by not further probing into the issue, only with an intention to keep the family atmosphere, healthy.

(iii) That in spite of all the above said activities, the respondent did not stop there, and continued with her activities without the consent of the petitioner and on one occasion, she has changed the surname of the child as Daivik Singh Atri as against the name that was registered in the Pune Municipal Corporation in the birth certificate

that showed the name as Daivik Singh. Here again when the petitioner questioned the respondent, she started picking up quarrel, abusing him in filthy language. On one occasion the petitioner purchased a property in Pune and due to implementation of RERA, the builder asked for part-payment of Rs.1.00 lakh immediately, and at that time, petitioner had no funds in account and he asked the respondent to transfer the amount of Rs.80,000/- and the respondent refused to transfer. However, the petitioner who knew the internet bank pass word of the respondent, transferred an amount of Rs.80,000/- from the account of respondent to the builder account, for which the respondent created a big galata.

(iv) That in the month of March, 2018, the respondent was transferred to Secunderabad and thereafter the petitioner was also transferred to Secunderabad, and this being their first posting and common work place, as per the army rules, they are allotted only one house and the house was allotted in the name of respondent. In the said house also, the respondent used to quarrel with the petitioner, abuse him in filthy language on some pretext or the other. But, petitioner bore all the harassment and did not come out of the house only with an intention that the social stigma of the respondent throwing him out, would not look nice. Even when they stayed in the quarter allotted at Secunderabad, the father of the respondent, who was a retired official in the Army was always advising the respondent in official matters, but slowly

started interfering in the personal affairs of the petitioner and would join the respondent in humiliating the petitioner.

(v) That on 19.09.2018 the petitioner was suffering from high viral fever and was bed ridden and at that time, the respondent due to some differences with the maid, asked the petitioner to interact with the maid servant, and when the petitioner refused to interact, the respondent started abusing the petitioner in a high pitch in front of the father in law and the conversation gradually went up to verbal assault and the father of the respondent said that after completion of their tenure in Secunderabad, he would see that the respondent and the petitioner are separated, and the respondent snapping back at the petitioner said in high pitch to move out of the house immediately. On the next day the petitioner was quietly discussing this incident with Lt. Col. Sanjeev Kumar and at the time the respondent along with son went out to the dinner party, and after some time the respondent lodged FIR against the petitioner for domestic violence. The petitioner was alone in the house and was feeling hungry and when he went into the kitchen to find some food there was nothing and the petitioner learnt that the respondent had directed the maid not to prepare any food at home, as they would go out for dinner.

(vi) That the petitioner informed his father over phone about all the incidents that occurred, and in turn the petitioner's father called upon the petitioner's commandant and Col. B.G. Budhrir, came to the house, saw the situation and took the

petitioner out of the house and put him in the officers' mess, assuring him of dealing with the respondent. In spite of such mess in the marital life, the petitioner came back and started living on his own with whatever he had.

(vii) That the respondent had been denying the petitioner conjugal rights and sex for the last three years. Ultimately, the petitioner went to the respondent and informed her that they should forget all the past happenings and at the end of the day laugh out and begin the next day new, but the respondent refused to listen to him.

(viii) That due to incompatibility between them, the mental and verbal abuse towards the petitioner and emotional manipulation of the situation, the petitioner is undergoing lot of depression, stress in his personal and professional life, and having no other alternative and to put an end to the painful situation, the present application moved seeking dissolution of marriage.

4. **Counter averments:** Respondent – wife filed counter affidavit admitting the marriage between the parties and denied all the adverse allegations made against her and family members in the petition. It is stated that their marriage and dowry was given to the parents of the petitioner as demanded by them, and that the nominee in the child account is the petitioner himself.

(i) That the petitioner held the parents and sister of the respondent in booking online train tickets when they were in need of traveling, for which the amount was paid

by her. That the petitioner who knew net banking password of the respondent misused the password and breached the trust of the respondent by transferring amount of Rs.80,000/- from her account without her knowledge, to the builder.

(ii) That the respondent never used any filthy language, nor has ever hit the petitioner. As per the Army Rules, when both the couples are posted in the same station, they are allotted only one house and a house was allotted in her name as she was posted at Secunderabad earlier to the transfer of the petitioner. But both the petitioner and respondent have an equal right over the house allotted.

(iii) That petitioner used filthy language in his day to day arguments in front of the child to the extent that even the child had started asking the meaning of the words.

(iv) That she lodged a police complaint against the petitioner for domestic violence at Begumpet Women Police Station and when she came back, she found the house doors opened and no one was in the house and petitioner had shifted to the mess. That petitioner was never thrown out of the house and that he himself quietly left the house when the respondent along with her father and child had gone to police station to lodge a police complaint and the household items bought by the petitioner have been handed over to him and the personal belongings, all the property documents are lying in the house.

(v) That to maintain healthy relationship, she repeatedly requested the petitioner to meet a counselor, but the petitioner is highly egoistic and did not agree. With these averments, the petition was sought to be dismissed.

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

1. Whether the petitioner is entitled for a decree of divorce?
2. To what relief?

6. In support of the case of the petitioner, he got examined himself as P.W.1 and got marked Exs.P-1 to P-5.

7. On behalf of the respondent, no evidence was adduced, except cross-examining the petitioner.

8. The Trial Court considering the pleadings of both the parties, and appreciating the entire evidence both oral and documentary, allowed the petition and directed the petitioner to deposit an amount of Rs.5,00,000/- in the name of the child. The operative portion of the impugned order, for better appreciation, is extracted as under:

“Though the petitioner establish the grounds of cruelty against the respondent / wife, the elicitations in the cross-examination of P.W.1 that he is not willing to lead marital life with the respondent, even if she is willing to join him and that his son is with the respondent and she is taking care of day to day activities of the son, go to show that the respondent is also not interested in continuing the conjugal life with the petitioner. If at all the respondent was willing to continue the marital life with the petition, she would have filed a petition for restitution of conjugal life, but no such attempt is made by the respondent / wife. Respondent did not even choose to lead any evidence to prove her stand taken in the counter. Both the parties being

the officers in the Army and well placed both socially and economically, there appears clear incompatibility between the couple and that the differences that arose between both of them have gradually lead to an unbridgeable gap bringing disharmony in the marital life. The aggressive nature of the petitioner as culled out from his own admissions in the cross examination is possibly giving rise to reasonable apprehension in the mind of any prudent wife more particularly a working lady that too a lady who is serving in the defence wing whose duties are primarily dedicted to the country, that it would not make it possible for the parties to live with each other. In the circumstances and in the interest of the parties, it is just and proper to grant divorce. However, keeping in view the minor son and his future expenses towards clothes, education and other expenses, the petitoner being father who is in obligation to maintain the child, he is directed to keep an amount of Rs.5.00 lakhs in fixed depost in the name of the child in a nationalized bank till the child attains majority. This point is answered accordingly.”

9. Assailing the above order, the wife filed the present appeal.

10. Heard Sri Police Venkat Reddy, learned counsel for the appellant / wife, and Sri Y.Shashidhar Reddy, learned counsel for the respondent / husband and perused the material available on record.

11. Learned counsel for the respondent / wife submits that petitioner did not file any document to show that parties led any martial life within the jurisdiction of the court at Secunderabad, and they were only posted to Secunderabad, just four or five months prior to the filing of the petition and hence, the court at Secunderabad has no jurisdiction to entertain the FCOP.

(i) He further submits that husband filed petition before the Trial Court under Section 13(1)(ia) and (ib) of the Act seeking dissolution of marriage on the ground of cruelty. The petitioner, except examining himself, has not examined any independent

witness to prove his allegations. Though the respondent – wife did not lead any evidence, filed counter affidavit and also got the petitioner cross-examined. As per the answers elicited from P.W.1 in his cross-examination it is clear that the petitioner – husband himself harassed and physically assaulted the wife and bet her on many occasions and that he ill-treated her, but these facts have been suppressed by the petitioner in his pleadings. Therefore, the court below rightly held that the husband failed to prove the cruelty.

(ii) That when husband failed to prove the cruelty, as alleged by him, the Trial Court ought to have dismissed the petition, but considering the evidence of the petitioner / husband that he is not willing to lead the marital life with the respondent, and that there is incompatibility between the parties, allowed the petition.

(iii) He further submits that the wife has withdrawn the criminal case filed by her to save the marital life.

(iv) The trial court without appreciating these facts and on mere surmises and conjectures allowed the petition filed by the petitioner, which cannot be sustained.

(v) Therefore, he submits that the Trial Court has not properly appreciated the evidence on record, and by misinterpreting the judgments of the Apex Court, allowed the petition, and hence the same may be set aside.

12. On the other hand, learned counsel for the husband, supporting the impugned order sought to dismiss the appeal.

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

14. The first issue raised by the counsel for the respondent / wife is with regard to jurisdiction of the trial court in entertaining the petition. It is to be seen that both the parties were posted at Secunderabad and lived together in the quarter allotted in the name of the wife and all the allegations leveled against the respondent / wife, were alleged to have taken place at the said quarter, and hence it is clear that cause of action has arisen at Secunderabad and hence the Family Court at Secunderabad has rightly entertained the petition and it cannot be said that the trial court lacks jurisdiction.

15. The petition averments are extracted above. The petitioner, who was examined as P.W.1., deposed in the chief examination as per the averments made in the petition. But in the cross-examination he admitted that Colonel advised both of them to live together, but he did not join the respondent. He also admitted that with an intention to save marriage, respondent did not go further and not registered a criminal case against him. He deposed that first time he bet respondent when she quarreled and abused his mother. That on 18.09.2018 there was an argument between him and his wife in front of his father-in-law, and that she abused him, and then he bet her for third

time. He admitted that on 18.09.2018 respondent was suffering cervical slip disc with nerve route compression. He admitted that that if any person suffering with cervical slip disc, with nerve route compression was hit by other person it is dangerous to life. He stated that when respondent has not conceived for three years, she suggested for adoption, but he refused for the same. He also admitted that the respondent underwent many tests in many hospitals for conceiving, and finally she begot a child. Eventually he stated that he is not willing to lead marital life with respondent though she is willing to join him. He also admitted that his son is with respondent and she is taking care of his day to day activities.

16. Thus from the above answers given by the petitioner in his cross-examination it is clear that he has bet the respondent thrice, and stated how the respondent has created such kind of situation, and explained the circumstances in his deposition. He deposed that he bet the respondent when the respondent quarreled with his mother and abused her, and on another occasion, when there was an argument between him and his wife in front of his father-in-law and when the respondent abused him in front of his father-in-law, asking him to leave the house immediately. In his cross-examination, he has stated the words actually uttered by the respondent, which are unparliamentary. Though the act of beating the respondent would amount to 'cruelty', the circumstances stated by him show that the respondent abused the mother of the petitioner and she has belittled him before her father and asked to leave the house by

using un-parliamentary language, and in view of the situation created by the respondent, the petitioner was constrained to beat her.

17. The marriage between the parties was held on 22.4.2004 and out of their wed-lock, they begot a boy child on 31.10.2011. As per the averments made in the petition as well as in the counter affidavit, it could be seen that there is no harmonious relation between the parties. It is to be seen that the petitioner inter alia alleged that the respondent has been denying the petitioner the conjugal rights and sex for the last three years. This averment has not been denied by the respondent in the counter affidavit filed by her.

18. There is no material evidence on record to show that the petitioner is suffering from ailment. This shows that he is hale and healthy and also working in Indian Army in the cadre of Lieutenant Colonel, of-course wife is also equally placed. In these circumstances denying the normal cohabitation by the respondent, would amount to subjecting the petitioner to 'mental cruelty'.

19. The Apex Court in the decision reported in ***PARVEEN MEHTA v.INDERJIT MEHTA***¹, while considering the matrimonial offences and mental cruelty, held that person enjoying normal health, being deprived of normal cohabitation by spouse and

¹(2002)5 SCC 706

thus undergoing anguish and frustration could be said to have been subjected to 'mental cruelty'.

20. Further it is a fact that the wife filed domestic violence case against the petitioner and later she has withdrawn the same. The learned counsel for the petitioner submits that the allegations made in the said domestic violence case are false, scandalous, malicious and baseless charges, and making such type of allegations itself amounts to mental cruelty, because they attach a stigma to the character of the petitioner. A Division Bench of this court in **P.PADMA v. P. CHENNAIAH**², 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.

21. As per averments made in the petition and in the counter, it could be seen that relationship between the parties is not harmonious and even for the trivial issues, the parties have made allegations against each other. It could be seen that on one occasion, the petitioner was required to pay the amount to a builder for the property purchased by him and that when he asked the respondent, she refused to transfer the amount. However, as the petitioner knew the internet bank pass word, he has transferred an amount of Rs.80,000/- from the account of the respondent to the builder. In the counter affidavit, the respondent alleges that the respondent has

²2022(1) ALD 103 (TS)(DB)

misused the password and breached the trust by transferring the amount without her consent to the builder. Here it can be understood that the petitioner has not misused the funds, but he has only transferred the funds to builder for purchase of the property, which is for the benefit of both the parties. Similarly, when the wife invested the amount, which they received on account of the first birthday of the baby boy in buying a property, the petitioner states that he felt guilty of using the child's money, but the wife had withdrawn the money to buy property at Pune. This sort of allegations, against each other, though trivial in nature, disturbed the harmony between the parties.

22. From a perusal of the averments made in the petition and the counter affidavit, and having regard to the above circumstances, it shows that no love is lasting between the parties. If the wife is really interested to join the husband, she ought to have filed a petition for restitution of conjugal rights. Not filing of such a petition, throws doubt on her intention. Further the son is with her and she is taking his day to day activities. These circumstances show that she is not interested to continue the conjugal life with the petitioner. The petitioner also states that he is also not willing to lead marital life with the respondent.

23. Further, on 2.8.2022 this court has directed the presence of both the parties in the court on 2.9.2022 for conciliation, if any. As the respondent could not reach the

court for conciliation, the matter was eventually heard on merits on 16.9.2022 and reserved for judgment.

24. As noted above, no love is lasting between the parties and since about September, 2018, both the parties are living separately and the wife filed a domestic violence case against the husband, but subsequently she has withdrawn the same. However, the case of the leaned counsel for the petitioner, as already stated above, is that it is a false case and filing of such false case itself amounts to cruelty and it attaches a stigma on the character of the petitioner, who is in the rank of Lieutenant Colonel, and in these circumstances forcing the parties to live together, and denying the decree of divorce may not be congenial and also amounts to further subjecting the petitioner to mental cruelty.

25. In the decision reported in NAVEEN KOHILI vs. NEELU KOHILI³, 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

³Appeal (Civil) 812 of 2004 dated 21.03.2006

divorce was set aside and the appeal filed by the appellant – husband for a decree of divorce was allowed. The relevant portion of the order is as under:

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

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

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

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

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

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

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

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

26. A Division Bench of this court in ***P.PADMA v. P. CHENNAIAH***⁴, 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.

27. It could be seen that the husband proved the mental cruelty against the wife and further having regard to the facts and circumstances of the case, the impugned order and decree of the trial court in allowing the petition filed by the husband and dissolving the marriage between the parties held on 22.04.2004 cannot be found fault with.

28. Further, it is to be seen that the court bearing in mind the needs and necessities of the child, directed the petitioner/husband to deposit an amount of Rs.5,00,000/- in a nationalized bank. Such a direction cannot be found fault with.

29. Having regard to the facts and circumstances of the case, we do not find any reason to interfere with the impugned order, and the issue framed is answered

⁴2022(1) ALD 103 (TS)(DB)

accordingly and the appeal is devoid of any merits and the same is accordingly dismissed.

30. 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