

**THE HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA
AND
THE HON'BLE SMT. JUSTICE M.G.PRIYADARSINI**

FAMILY COURT APPEAL No.111 OF 2011

JUDGMENT:-

1. Questioning the validity in the findings given and the consequential conclusion arrived at by the Additional Family Court, Hyderabad, in O.P.No.889 of 2007 through orders dated 11.01.2011, the present Appeal is preferred.
2. The appellant moved an application invoking the grounds of cruelty and desertion seeking a decree of divorce dissolving the marriage that was solemnized between him and the respondent. The Court, through the impugned order, negatived his request.
3. Heard Sri V.Sudhakar Reddy, learned counsel appearing for the appellant. Despite service of notice, none appeared for the respondent.
4. Stating that the Family Court ought to have relieved the appellant from the bondage, learned counsel for the appellant submitted that the respondent foisted series of false cases against the appellant and that apart, his mother, sister and brother-in-law were also implicated. Learned counsel

submitted that the criminal case, alleging that the appellant and his family members committed offence punishable under Section 498-A IPC, ended in acquittal and the revision preferred also stood dismissed. Learned counsel contended that the respondent filed a Domestic Violence Case and the proceedings in the said Domestic Violence Case were quashed. Learned counsel also stated that it is the second marriage of the respondent with the appellant and the respondent filed a false criminal case against her first husband and extracted money as permanent alimony and the said fact was indeed established before the Family Court. Learned counsel stated that the respondent behaved cruelly with the appellant and ultimately deserted him. But, without appreciating all these facts, the Family Court erred in dismissing his application filed for divorce and therefore, by allowing the present appeal, justice may be done. Learned counsel finally submitted that even the marriage is liable to be dissolved on the ground of irretrievable break down of relationship since several years.

5. The version projected by the appellant through the application filed by him seeking divorce is that his marriage with the respondent was performed on 19.11.2004 at

Tirumala Tirupati Devasthanams and thereafter, the respondent joined him to lead marital life. However, they resided together only for about 10 days and thereafter, the respondent started quarreling with him on one pretext or the other and made his life miserable. The respondent openly proclaimed that her marriage was performed against her will. She initially demanded to set up a separate family and when the appellant agreed and obtained small portion of a house, she expressed her disinterest to stay with the mother of the appellant. She left the house and went to her parent's house for 16th day festival which would be performed as per caste customs and did not return back. She filed Maintenance Case with false allegations and also gave complaint to police stating that the appellant and his family members committed offence punishable under Section 498-A IPC. After elaborate trial, the Court acquitted them. Though mediators were sent by the appellant to convince the respondent, their attempts did not yield any fruitful result. During enquiry, the appellant came to know that the respondent married one Kavuri Sambasiva Rao and refused to join him and filed a Maintenance Case against him and obtained maintenance and thereafter, she filed a criminal case against him i.e., her

first husband under Section 498-A IPC and later, dropped the case on receiving substantial amount from him. It appears that marriage is a profitable game to her and her parents and thus, the marriage is liable to be dissolved.

6. The respondent filed counter admitting the marital tie and filing of a criminal case against the appellant and his family members. She also admitted filing of a Domestic Violence Case against the appellant. She sought the Court to dismiss the O.P. by awarding exemplary costs.

7. The Family Court, which dealt with the matter, subjecting the evidence of PW1, RW1, Exs.P1 & P2 and Exs.R1 to R9 to scrutiny, came to a conclusion that the appellant failed to prove his case.

8. The contents of Ex.P1 goes to show that the criminal case that was levelled against the appellant and his family members, ended in acquittal. During the course of hearing, learned counsel for the appellant brought to the notice of this Court the contents of the order in Criminal Revision Case No.1777 of 2007, which stood pending before High Court of Andhra Pradesh at Amaravathi. In the said case, the Court, concurring with the opinion expressed by the trial Court that

the allegations levelled against the appellant and his family members in the criminal case are omnibus in nature, dismissed the said Revision case that was preferred by the respondent herein challenging the judgment of acquittal. Also, it is brought to the notice of this Court that the proceedings in the Domestic Violence Case that were initiated against the appellant and his family members were quashed by the High Court of Judicature at Hyderabad through orders in CrI.P.No.6076 of 2007, dated 17.06.2010. Even as per the version of the respondent, she did not reside along with the appellant for more than two months. She made different allegations against the appellant and his family members, including demand for additional dowry, property, etc. However, specific instances are not narrated anywhere in the counter filed. That apart, none of the allegations levelled are observed to be genuine by the competent criminal Court.

9. By all the material that is brought on record, it is also abundantly clear that the spouses i.e., the appellant and the respondent are living separately since more than 17 years. Submitting that foisting false cases itself amounts to mental cruelty and that long period of continuous separation is a ground to pass a decree of divorce, learned counsel for the

appellant relied upon the decision of the Hon'ble Apex Court in the case between **K.SRINIVAS RAO Vs D.A.DEEPA**¹. In the said decision, dealing with the term "cruelty" and the aspect of irretrievable break down of marriage, the Court at Paras 10 & 11 of the judgment held as follows:-

"10. Under [Section 13\(1\)\(i-a\)](#) of the [Hindu Marriage Act, 1955](#), a marriage can be dissolved by a decree of divorce on a petition presented either by the husband or the wife on the ground that the other party has, after solemnization of the marriage, treated the petitioner with cruelty. In a series of judgments this Court has repeatedly stated the meaning and outlined the scope of the term 'cruelty'. Cruelty is evident where one spouse has so treated the other and manifested such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental.

11. In Samar Ghosh this Court set out illustrative cases where inference of 'mental cruelty' can be drawn. This list is obviously not exhaustive because each case presents it's own peculiar factual matrix and existence or otherwise of mental cruelty will have to be judged after applying mind to it. We must quote the relevant paragraph of Samar Ghosh. We have reproduced only the instances which are relevant to the present case.

¹ (2013) 5 Supreme Court Cases 226

“101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

*(iii) * * **

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the

resultant danger or apprehension must be very grave, substantial and weighty.

*(vii)-(ix) * * **

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

*(xi)-(xiii) * * **

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

At Paras 30 & 31, the observations made are as under:-

30. It is also to be noted that the appellant-husband and the respondent- wife are staying apart from 27-4-1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in

Samar Ghosh², if we refuse to sever the tie, it may lead to mental cruelty.

31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage 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 life on account of artificial reunion created by the court's decree.

10. Learned counsel, on the same aspect also placed reliance upon the decision of the Hon'ble Apex Court in the case between **K.SRINIVAS Vs.K.SUNITHA³**. When the entire material that is brought on record by way of evidence is perused, what we could find is that the respondent left her matrimonial home basing on trivial issues and as she could not adjust herself with the family members of the appellant.

² (2007) 4 SCC 511

³ (2014) 16 Supreme Court Cases 34

On leaving the matrimonial home, she started filing cases one after the other. The appellant started challenging the acts of the respondent in doing so by knocking the doors of relevant and higher forums.

11. All these facts goes to show that the relationship is irretrievably broke down and no hope as of now survives for the couple to live together hereafter. That apart, what we could find is that the attitude of the respondent is the root cause for all sufferings.

12. Having perceived all these aspects, the Family Court ought to have passed a decree of divorce, though not on the ground of cruelty, but as the ground of desertion is established. Therefore, we are of the considered view that the order of the Family Court which is under challenge, requires interference and is liable to be set-aside.

13. Resultantly, the Appeal is allowed. The order that is rendered by the Additional Family Court, Hyderabad, in O.P.No.889 of 2007, dated 11.01.2011, is set-aside. Consequently, the petition filed by the appellant for grant of divorce is allowed. The marriage between the appellant and

the respondent is therefore dissolved through a decree of divorce. There shall be no order as to costs.

14. Miscellaneous petitions, if any pending, shall stand closed.

Dr. JUSTICE CHILLAKUR SUMALATHA

JUSTICE M.G.PRIYADARSINI

Dt. 01.03.2023

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