

HONOURABLE Dr. JUSTICE CHILLAKUR SUMALATHA
AND
HONOURABLE SMT JUSTICE M.G.PRIYADARSINI
FAMILY COURT APPEAL No.202 of 2019

JUDGMENT: *(per Hon'ble Dr. Justice Chillakur Sumalatha)*

Contradicting the view expressed by the Family Court, Mahabubnagar, and disputing the findings given, the appellant who is the petitioner in FCOP.No.26 of 2017 is before this Court.

2. The appellant, being the husband of the respondent, moved an application before the Family Court, Mahabubnagar, seeking a decree of divorce on the ground of cruelty and desertion and the Family Court, which dealt with the case, coming to a conclusion that the petition filed by the appellant is devoid of merits, dismissed the same.

3. Heard both sides.

4. Making his submission, learned counsel for the appellant contended that the Family Court ought not to have dismissed the petition filed by the appellant for dissolution of marriage. Learned counsel stated that the appellant by all the evidence he produced, had

established that his wife i.e., the respondent behaved cruelly with him and his family members and thereafter, deserted him. But, picking up negligible and trivial facts, the learned judge of the Family Court came to an erroneous conclusion. Learned counsel finally submitted that the marriage had irretrievably broken down and the spouses are living separately since more than six years as of now and therefore, setting aside the order of the Family Court, the marriage between the appellant and the respondent may be dissolved.

5. Opposing the submissions thus made, learned counsel for the respondent stated that the respondent still loves her husband i.e., the appellant. Learned counsel submitted that the respondent was blamed on the ground that she do not know the art of cooking and further, all the family members of the appellant harassed the respondent demanding additional dowry and she was finally necked out of the house. Learned counsel also stated that even while giving evidence, the respondent stated that she is prepared to join her husband i.e., the appellant and live with him and having considered the fact that the

respondent is neither guilty of cruelty nor desertion, the Family Court rightly dismissed the petition filed by the appellant and therefore, the order of the Family Court needs no interference.

6. When the appellant based his case on the evidence of P.Ws.1 to 4 and Exs.P-1 to P-3, the respondent tried to establish her version through the evidence of R.Ws.1 to 3.

7. The matrix of the case, as projected by the appellant through his application for divorce, is that the marriage between the appellant and the respondent was solemnized on 20.8.2014 as per Hindu rites and customs and the marriage expenses were borne by the parents of the appellant. The marriage was consummated and the respondent joined the company of the appellant to lead marital life. They lived happily for six months. Thereafter, the respondent used to quarrel with the appellant and his family members on petty issues, she behaved in a strange manner and failed to look after the welfare of the parents of the appellant. The respondent who was accustomed for loneliness, failed to mingle with the appellant and his parents. She was not even aware about the process of

cooking. In the month of April, 2015, the respondent quarrelled with the mother of the appellant and left the matrimonial house without informing. Thereafter, she stayed at her parents' house for two months. The father and the brothers of the respondent brought her back to the appellant. They admitted that the fault lies on part of the respondent. The respondent lived with the appellant for a period of five months and again quarrelled with the mother of the appellant on a silly issue and left the house and reached her parents' house without even intimating to the appellant. At that time, she took a small girl of neighbours without the consent of her parents. She remained at her parents' house for three months. It was intimated to the appellant by the respondent that she is pregnant. Subsequently, the appellant came to know that the pregnancy was got terminated. Later, she again joined the appellant. At that time, the father and brothers of the respondent admitted that fault lies on part of the respondent and admonished her. Subsequently, i.e., one day after Deepavali festival in the year 2016, when the father of the appellant asked the respondent to move freely

with the family members, the respondent entered into a room, bolted the door and remained in the room till the next day. On the information given by her, her parents came and scolded the appellant and his parents in filthy language. On two or three occasions, the respondent also made attempt to commit suicide. The mother of the respondent used to make public nuisance and used to quarrel in public place abusing the appellant and his parents in filthy language. Though the appellant contacted the respondent and made his best efforts to secure her presence to lead marital life, she did not evince any interest. Even the panchayat held did not yield any result. The respondent threatened the appellant and his parents that if the appellant approaches her again, she will file a criminal case against him and his parents. On that, the appellant got issued a legal notice to the respondent demanding her to join him. But, the said notice returned unserved 'as refused'. However, the respondent did not join. In spite of those instances, having regard to the tender age of the respondent, the appellant, ignoring all the things, was ready and was intending to lead happy marital

life with the respondent. He therefore, filed a petition for restitution of conjugal rights *vide* FCOP.No.47 of 2016. However, the notices sent were got returned. On coming to know about the filing of a petition for restitution of conjugal rights, the respondent went to Women Police Station, Vikarabad and lodged false complaint against the appellant, his parents and all his family members. On the call given by the Police, the appellant and his family members appeared before the Station House Officer. At that time, the respondent, her father, her mother and her brothers were also present there. The respondent quarrelled with the appellant and his father, abused them in filthy language before the Station House Officer, tried to man handle the appellant by catching hold his shirt and insulted by saying that he is impotent and that she cannot live with him. Thus, the respondent had no intention to join the appellant.

8. The version of the respondent as per her pleadings is that the appellant and his family members used to harass her for begetting children and also demanding additional dowry. The father of the appellant is a retired constable

having influence in the department and society. He created nuisance whenever her parents visited the house to see her. The appellant and his parents necked her out from their house asking her to bring additional dowry. Even panchayat was held in that regard. She lodged complaint against the appellant and his family members for harassing her physically and mentally and also for demanding additional dowry. She is ready to lead marital life with the appellant.

9. When the version of the appellant is that the respondent voluntarily left the matrimonial house, the contention of the respondent is that she was necked out from the house by the appellant and his family members. It is borne by record i.e., through the contents of Ex.P-3 that the appellant initially moved an application under Section 9 of the Hindu Marriage Act, 1955, for restitution of conjugal rights. As per the version of the appellant, after he knocked the doors of the Court for appropriate relief, the respondent filed false cases against him and his family members.

10. The respondent who examined herself as R.W-1 during the course of cross-examination admitted that subsequent to filing of the FCOP by the appellant, she filed a case under Section 498-A IPC, a Domestic violence Case and also a Maintenance case. Either in her pleadings or in the evidence produced, the respondent failed to state in clear terms about the payment of dowry, if any, and the instances of demand of additional dowry by the appellant and his family members. At least, the amount that was demanded is not stated. The version of the appellant is that the respondent do not know the art of cooking, was habituated to live in loneliness, failed to mingle freely either with him or his family members, attempted to commit suicide a couple of times and frequently left matrimonial house on trivial issues.

11. When the impugned order of the learned judge of the Family Court is gone through, this Court finds that the learned judge at para 9 of the order held that R.W-1 is a grown up girl by the time of marriage, hailing from a tiny village and that it is common knowledge that the girls of marriageable age in agricultural families like that of R.W-1,

invariably and habitually are taught the art of cooking by their mothers because they are very much aware of the fact that sooner or later they have to get their daughters married and cooking is an integral part of a house wife.

12. In the case on hand, it is not the sole allegation that the respondent do not know the art of cooking. Though an averment was made by the appellant that the respondent do not know the art of cooking, it was not taken as a ground seeking decree of divorce. By the evidence that is produced by the appellant before the Family Court, he made it clear that the respondent by raising disputes on trivial issues, attempting to commit suicide couple of times and finally, leaving the house frequently, had caused mental cruelty. Though the version of the appellant is also that when the respondent gave complaint to Police and when himself and his family members were summoned, the respondent holding his shirt, abused him in the presence of all, including the Station House officer, in most filthy language alleging him to be impotent, no convincing proof is produced to that effect.

13. The word 'cruelty' which is used in Section 13 of the Hindu Marriage Act, 1955, should be looked into in the context of human behaviour in relation to a particular case, particularly with regard to the matrimonial obligations and the duties to be performed by the contracting parties to the marriage in respect of each other, which ultimately binds the marital life. Admittedly, an adverse behaviour on part of one of the spouses would affect the physical, mental and social well-being of the other spouse. It also affects the family members connected to the contracting parties to the marriage.

14. In the case on hand, it is clearly established that the appellant made all his attempts to lead marital life with the respondent, but he could not succeed. No reason is offered as to why the respondent failed to give any complaint to Police soon after the alleged incident that occurred demanding additional dowry, which ultimately made her to remain at her parents' house. The respondent herself admitted that after filing of F.C.O.P. by the appellant for restitution of conjugal rights, she gave

complaint to Police, filed a Domestic Violence case and a Maintenance Case.

15. As earlier indicated, the respondent failed to state in clear terms and establish the alleged demand of additional dowry by the appellant and his family members. Surprisingly, her father who was examined as R.W-2 and her brother who was examined as R.W-3 did not state anything either about the payment of any dowry or demand of additional dowry. However, without considering all these facts, the learned judge of the Family Court, as rightly put forth by the learned counsel for the appellant before this Court, has dismissed the application filed by the appellant for grant of decree of divorce. The appellant through all the evidence produced, has clearly established the acts of cruelty on part of the respondent. Thus, having established the said ground, the appellant is entitled for dissolution of marriage through a decree of divorce. Therefore, we are of the considered view that by allowing this Appeal, the order under challenge is liable to be set aside.

16. Resultantly, this Appeal is allowed. The order that is rendered by Family Court, Mahabubnagar, in FCOP.No.26

of 2017, dated 21.8.2019, is set aside. Consequently, the marriage that was solemnized between the appellant and the respondent is hereby dissolved through a decree of divorce. Each party do bear their own costs.

17. Pending Miscellaneous Petitions, if any, shall stand closed.

Dr. JUSTICE CHILLAKUR SUMALATHA

JUSTICE M.G.PRIYADARSINI

27.01.2023
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