

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.8871 OF 2019
(Arising out of SLP(Civil) No.1981 of 2019)

RANI NARASIMHA SASTRY

APPELLANT(S)

VERSUS

RANI SUNEELA RANI

RESPONDENT(S)

O R D E R

Leave granted.

Appellant appeared in-person. The respondent, despite service did not appear. This Court, vide order dated 16.09.2019, appointed Mr. Rana Mukherjee, learned senior counsel, as amicus curiae on behalf of the respondent.

We have heard the appellant appearing in-person as well as Mr. Rana Mukherjee, learned amicus curiae on behalf of the respondent.

The marriage between the appellant and the respondent was solemnized on 14.08.2005 at Annavaram Sri

Veera Venkata Sathyanarayana Swamy Temple of East Godavari District of Andhra Pradesh. After marriage appellant and respondent lived together until 17.01.2007 and thereafter they have been living separately for more than 10 years.

This appeal has been filed by the appellant challenging the judgment of the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh dated 05.01.2017 in Civil Miscellaneous Appeal No.1279/2011. The appellant has filed O.P. No.109/2007 in the Court of Principal Senior Civil Judge, R.R. District, L.B. Nagar under Section 13(1)(i-a) and (iii) of Hindu Marriage Act, 1955 (hereinafter referred to as the "Act") praying for dissolution of the marriage with the respondent. The petition was filed basically on two grounds, namely, cruelty as well as mental illness of the respondent. In the petition the appellant appeared as PW-1 and one Upadhyayula Viswanadna Sarma has appeared as PW-2. Documents Ext.P1 to P.29 were filed. The respondent was examined as RW-1, one D. Nagabhushan Rao was also examined as RW-2. Documents Ext.R1 to R3 were filed by the respondent. The Trial Court framed following points for determination:

"12. Now the points that arises for determination are:

1) Whether the petitioner established and proved that the respondent treated the

petitioner with cruelty?

2) Whether the petitioner established and proved that the respondent has been incurable unsound mind or has been suffering continuously or intermediately from mental disorder?

3) Whether there are sufficient grounds to grant decree of divorce as prayed by the petitioner?

4) To what relief?"

The Trial Court decided both point no.1 and point no.2 against the appellant and held that appellant failed to prove that he was treated with cruelty by respondent. With regard to second point Trial Court also held that evidence adduced by the appellant was not at all sufficient to come to conclusion that the appellant has established the alleged mental disorder of respondent. Resultantly, petition was dismissed on 05.09.2011 against which the appeal has been filed in the High Court. The appeal too has been dismissed by the High Court on 05.01.2017 against which this appeal has been filed.

The appellant appearing in-person submitted that he has made out a case for grant of dissolution of marriage on the ground of cruelty but the Court below erred in law in rejecting the application. He submitted that apart from various other instances, as mentioned in the application as well as in evidence, a case was set up by the appellant that false complaints have been filed by the respondent against the appellant and his family members and criminal

cases have also been initiated which fully prove the cruelty on the part of the respondent. He submitted that FIR Criminal No.148/2007 in which charge-sheet No.672 of 2007 was submitted against the appellant and his sister-in-law on the basis of which charge under Section 498-A of Indian Penal Code (IPC) was framed and the appellant was tried by the Court of Metropolitan Magistrate, Cyberabad. It is submitted that the Court held the appellant not guilty of offence under Section 498-A IPC and he was acquitted which clearly establishes cruelty at the instance of the respondent.

Mr. Rana Mukherjee, learned senior counsel, submitted that Court below had rightly rejected the petition of the appellant as he having failed to prove cruelty as well as mental illness of the respondent. Mr. Rana Mukherjee further submitted that there is a daughter born to appellant with regard to whom an order of maintenance has also been passed under Section 125 of Code of Criminal Procedure.

We have considered the submissions of appellant-in-person as well as learned senior counsel appearing for the respondent.

The petition filed by appellant for dissolution of marriage on the ground of cruelty and mental illness has

been rejected by the Court below. With regard to second ground i.e. mental illness of the respondent, no serious efforts have been made to question the findings of the Court below which ground has rightly rejected by the Court below. The Court below has also observed that respondent is working as Sanskrit Lecturer, hence, there is no merit in the submission of the appellant that respondent is suffering from mental illness.

The ground which was pressed by the appellant before the Trial Court and the High Court was ground of cruelty. We need to only consider as to whether the ground for divorce under Section 13(1)(i-a) of the Act has been made out or not. Before the Trial Court, the appellant has relied several incidents of cruelty allegedly meted out by the respondent towards him and his family members. In paragraph 25 of the judgment criminal case filed by the wife under Section 498-A of IPC was referred to and relied. The Trial Court has noted the ground of cruelty on the basis of filing criminal case but Trial Court refused to rely on the said allegation on the ground that criminal case filed by the respondent in C.C. No.672/2007 is pending for adjudication. The Trial Court's judgment was delivered on 05.09.2011, which was questioned by the appellant before the High Court by filing an appeal no.1279/2011. During pendency of the appeal before the

High Court, the judgment in C.C. No.672/2007-The State of AP through PS L.B. Nagar Vs. Rani Narasimha Sastry and another was decided. Learned Metropolitan Magistrate held that prosecution has failed to prove charge under Section 498-A of IPC. Paragraphs 32 and 34 of the judgment are as follows:

"32. Having regard to the facts and circumstances of the case and after careful scrutiny of entire oral and documentary evidence on record, it is the considered view of this court that both the defacto-complaint/PW1 and the accused seems as coming from respectable families from a respectable community, both are well educated, well brought up has developed hat-redness towards each other and the relationship between them is already estranged and it is in irretrievable breakage of marriage perhaps and probably due to some egoistic problems and their hat-redness went to the extent of throwing mud on each other before the courts as PW1 alleged in her complaint that the accused is trying marry one Valli the sisters daughter of the accused, and as per the suggestion given by the accused to PW1 during her cross examination the accused is alleging illicit relationship between PW1 and PW3 and egoistic problem turned into pervertism against each other adding bitterness further to see the bad of each other. However, though Ex.P1 complaint given by PW1 against accused as A1 and his sister as A2 Smt. A. Surya Kumari, the proceedings against A2 were already quashed by the Hon'ble High Court of AP in vide Criminal Petition No.5628/2008 dated 07-12.2011 issued by the Hon'ble High Court of A.P. Hyderabad and now in the present case against A1 also the prosecution has failed to prove the same beyond all reasonable doubt against A1 for the offence punishable u/s. 498A IPC.

33. xxx xxx xxx

34. In the result, accused is found not guilty of the offence punishable u/s.498A IPC and thus I acquit him u/s.248(1) Cr.P.C. the bail bonds of the accused and that of his sureties if any shall stands cancel after expiry of appeal

time."

This Court has laid down that averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. This Court in Vijaykumar Ramchandra Bhatte Vs. Neela Vijaykumar Bhatte¹ has laid down following in paragraph 7:

"7. The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. The position of law in this regard has come to be well settled and declared that leveling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross- examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to

1. (2003) 6 SCC 334

feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible."

In the present case the prosecution is launched by the respondent against the appellant under Section 498-A of IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under Section 498-A of IPC not only acquittal has been recorded but observations have been made that allegations of serious nature are levelled against each other. The case set up by the appellant seeking decree of divorce on the ground of cruelty has been established. With regard to proceeding initiated by respondent under Section 498-A of IPC, the High Court made following observation in paragraph 14:

14.....Merely because the respondent has sought for maintenance or has filed a complaint against the petitioner for the offence punishable under Section 498-A of IPC, they cannot be said to be valid grounds for holding that such a recourse adopted by the respondent amounts to cruelty."

The above observation of the High Court cannot be approved. It is true that it is open for anyone to file complaint or lodge prosecution for redressal for his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot

ipso facto be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under Section 498-A of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband. As per pleadings before us, after parties having been married on 14.08.2005, they lived together only 18 months and thereafter they are separately living for more than a decade now.

In view of forgoing discussion, we conclude that appellant has made a ground for grant of decree of dissolution of marriage on the ground as mentioned in Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

We allow the appeal of the appellant and grant decree of divorce. The learned amicus curiae appearing for the respondent has lastly submitted that appellant be directed to make payment of maintenance to the daughter who is a minor. Appellant has willingly agreed that he shall pay Rs.2000/- per month to the daughter as maintenance. We direct the appellant to make payment of maintenance for daughter of Rs.2000/- per month. Appellant shall make the payment of Rs.2000/- per month in the bank account of respondent with whom the minor daughter is living as on date. The payment shall start from next month i.e. December 2019. We, however, grant liberty to the

minor daughter to seek enhancement of the compensation in accordance with law by filing appropriate application before the Magistrate, if so advised.

The appeal is allowed to the above extent.

.....J.
(ASHOK BHUSHAN)

.....J.
(NAVIN SINHA)

New Delhi;
November 19, 2019

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s).1981/2019

(Arising out of impugned final judgment and order dated 05-01-2017 in CMA No.1279/2011 passed by the High Court Of Judicature At Hyderabad For The State Of Telangana And The State Of Andhra Pradesh)

RANI NARASIMHA SASTRY

Petitioner(s)

VERSUS

RANI SUNEELA RANI

Respondent(s)

(IA No. 72697/2018 - EXEMPTION FROM FILING O.T.)

Date : 19-11-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE NAVIN SINHA

For Petitioner(s)

Petitioner-in-person

For Respondent(s)

Mr. Rana Mukherjee, Sr. Adv. (A.C.)
Mrs. Neha Sharma, AOR
Ms. Surabhi Guleria, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

Pending application(s), if any, stands disposed of.

(ARJUN BISHT)
COURT MASTER (SH)

(RENU KAPOOR)
BRANCH OFFICER

(signed order is placed on the file)