

HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B.SIVA SANKARA RAO

F.C.A No.123 of 2008

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JUDGMENT: (Per Dr Justice B. Siva Sankara Rao)

The appellant is no other than husband of the respondent by virtue of their marriage dated 15.02.1984 under Christian law, caste custom and rites. In their wedlock, they blessed with two children. The wife filed the O.P.No.3 of 2007 on the file of the Judge, Family Court, Secunderabad under Section 10(ix)(x) of the Indian Divorce Act seeking dissolution of their marriage dated 15.02.1984 on the grounds of cruelty and desertion.

2. After contest by the appellant herein as respondent therein and with reference to the oral and documentary evidence of the petitioner-wife as PW.1, and Ex.A.1, notice dated 14.12.2002, (which was cause issued by respondent(husband) through advocate to her) and of the respondent as RW.1 and Exs.B1 and B.2 (Xerox copies of the test reports given by psychologist and notice dated 09.01.1997) the trial Court held that the petitioner-wife could establish that the respondent is guilty of cruelty and by order dated 10.04.2008 dissolved said marriage.

3. It is impugning the same, he maintained the present appeal in person with contentions in the grounds of appeal that the order and decree passed by the lower Court dissolving his marriage is contrary to law, weight of evidence and probabilities of the case and from ill-appreciation of the material on record, that the trial Court should have

seen that the petitioner-wife in seeking divorce could not make out any case for entitlement to dissolve the marriage either on the ground of desertion or cruelty, that the trial Court miserably failed to appreciate these aspects without even worth evidence from her side much less documentary and also in ignoring the evidence of him as respondent-husband in opposing her claim for non-entitlement, that the lower Court failed to consider that it is his wife that left the matrimonial home and suffered him with cruelty and not vice versa, that the trial Court also failed to consider that Ex.A.1 notice issued by him was in requesting her to come and join and having not given any reply, there is nothing therein to support her contention for entitlement to the relief of divorce, that the trial Court also failed to provide chance to present audio tape in a battery operated sound system that he carried at the time of final hearing as to the cruelty he suffered in the hands of his wife and not vice versa and despite it; keeping in his mind the welfare of the two children blessed with in their wedlock, he has not chosen to go for divorce and thereby sought to set aside the decree dissolving the marriage by allowing the appeal as prayed for.

4. The appellant reiterated the same contentions in course of hearing the appeal supporting the above grounds of his appeal.

5 . Whereas, it is the contention of the learned counsel for the respondent(wife) to the appeal that the very Ex.A.1 letter itself is sufficient to establish the cruelty she suffered in his hands including grave and wild allegations and the harassment he caused to suffer making her life miserable and unable to live, that even the children are vexed with his attitude and conduct and the trial Court having appreciated the facts fresh in mind, having recorded the evidence and after hearing and considering the facts and law and supported by reasons, arrived the right conclusion that various contentions raised in the grounds of appeal thereby are fighting in air and nothing but untenable and for this Court while sitting in appeal there is practically nothing to interfere and hence to dismiss the appeal.

6. Heard and perused the material on record with reference to the rival contentions supra advanced by both sides. For the sake of convenience the parties hereinafter are referred to as arrayed before the trial Court.

7. Now the points that arise for consideration are:

1) Whether there are no any grounds on cruelty for dissolving the marital tie and if so, the decree dissolving the marital tie dated 15.02.1984 between the couple is unsustainable and requires interference by this Court while sitting in appeal and with what observations?

2) To what relief?

POINT No.1:

8. The undisputed facts are that the marriage between the petitioner-wife and respondent-husband took place as per Christian Law and Customs on 15.02.1984 and in their wedlock, they were blessed with two children and the couple have been living separately since 1997 and the wife worked as a teacher for sometime in AECS, Mumbai and also at Tarapur. Undisputably, the husband filed O.P.No.46 of 1991 before the Family Court, Mumbai at Bandra for restitution of conjugal rights and it was ended in compromise. Later the wife filed O.P.No.8 of 1997 before the District Judge, Thane seeking for judicial separation and the same was dismissed for default. Equally, the Miscellaneous Petition No.207 of 2000 before the JMFC, Varsi and also a criminal case for alleged causing of fracture to her ribs for the offence under IPC at Varsi was ended in acquittal. It is also not in dispute of the fact that Ex.A.1, notice, dated 14.12.2002 cause issued by the respondent-husband through his Advocate to the petitioner-

wife, which reads that:

“My client says that while my client was the person who served you legal notices, it is you who went to police and another court for a divorce, as a petitioner. My client says that you proceeded with the case till you were getting maintenance and that you stopped proceeding with the case when the case came for a hearing, since you did not want to give my client a mutually accepted divorce. My client says that out of the court, you advised him to remain single having an eye on his property. My client says that you had all the sexual pleasures obtained from your lesbian friend or otherwise, as you chose to live in an unprotected place 100 km away from your working place for fear of noticing your activities with your ill-gotten friends male and female.”

The same was also extracted in para 9 of the judgment of the Lower Court.

9. Now coming to the correctness of the divorce decree granted by the trial Court, it is the case of the petitioner-wife that since inception of their marriage, the respondent-husband was in the habit of quarreling by finding fault with even on petty issues, by suspecting her chastity and by spreading false rumors with regard to her liberty and also in the habit of sending letters to her relatives in this regard falsely. Further, he was even creating unruly scenes at her respective work places in Thane at Mumbai and at Tarapur, apart from assaulting her physically and on one of such occasions, she sustained fracture of ribs, for the physical assault she meted out in his hands besides un-parliamentary abuses he was hurling. A criminal case was also filed by her for his beating and the case, no doubt, ended in acquittal. The acquittal is, in fact, not because of no injuries or it is a totally false case; but for non-proving of the said factum as required beyond reasonable doubt. So far as the present case in relation to the cruelty is concerned, the physical assault she suffered in his hands with reference to the above and from his cross examination answers as RW.1 can be said proved by her by preponderance of probability. Apart from it, he filed divorce O.P.No.56 of 2003 on the file of the Principal District Judge, Tuticorin in Tamil

Nadu State. However, it is one of the contentions that the Court inherently lack jurisdiction to give any sanctity to that. That is also to show there is no love lost between the couple.

10. Apart from the above, the Ex.A.1-notice referred supra is highly defamatory and in abusive language, which any husband is not supposed to make, if at all he got any little respect for their marital life and give sanctity to it. It is to say that, in the absence of defending by him to substantiate if any truth therein; it is *per se* wild, cruel, defamatory and highly unbecoming to bear by any ordinary prudent person by facing such accusations. Even for his saying, any truth therein, there is no any little evidence. Though under Section 3 of the Indian Evidence Act, mere non proof of any ordinary allegation does not disprove the same; where such of those allegations, *per se*, wild, cruel, highly unbecoming and defamatory that are when contained in the letter covered by Ex.A.1 which he cause issued not in dispute when these are *per se* highly derogatory and not proper for any dutiful husband to make against his wife, that is nothing but causing cruelty with mental agony making unbearable to live with any little affection towards the husband in his company. That is also one of the considerations before the trial court in its arriving the finding of the husband is guilty of cruelty. Apart from it, after notice, dated 14.12.2002, he filed the divorce O.P seeking dissolution of the marital life with his wife as referred supra in O.P.No.56 of 2003 on the file of the Principal District Judge, Tuticorin, Tamil Nadu State. The dissolution decree passed is even according to him with lack of inherent jurisdiction; that shows the conduct of the husband of no mind to live with wife at least to take the same into consideration as act of constructive desertion on his part with permanent *animus deserandi* and the law is well settled, in this regard that the Court can take note of even subsequent events and conduct of parties after filing of the case till termination of the proceedings as part of appreciation of the matter for entitlement or not to the reliefs. Thus, O.P.No.46 of 1991 for restitution of conjugal rights filed in Bandra

earlier was even ended in compromise and they joined together, so far as the subsequent conduct referred above, more particularly from Ex.A.1, notice with wild and uncharitable allegations by the husband against his wife, even after their drowning the differences by coming into compromise for restitution of conjugal rights in O.P.No.46 of 1991 on the file of the Family Court, Bandra; this conduct of the husband is nothing but cruelty towards wife apart from the physical cruelty referred supra covered by the criminal case she filed for her ribs fracture in his hands from his beating, despite its acquittal on benefit of doubt as discussed supra.

11. The respondent-husband in his very chief examination besides what is alleged in Ex.A.1, stated that his wife was in friendship with lesbian woman and that lesbian woman cleared debts of his wife's brother, and his wife is of bad character and the family relations between him and his wife are not cordial. In the cross examination, however, he admitted that he found PW.1 embarrassed a girl friend. He admittedly did not initiate any action for the alleged homosexuality. Even to say that his wife is immature or to make such wild allegations against her, there is no basis for him. It is in fact, she worked as a teacher in the Defence High School of Atomic, Mumbai and at Tarapur. It is to say but for prudence, she could not be continued in that employment as a teacher to impart discipline and academics to the students, which is more than suffice to say the grave averments and wild allegations made by the husband against the wife, are nothing but *per se* being wild cruel and uncharitable.

12. Thus, the trial Court was right in all respects in its reasoned conclusions in holding that the petitioner-wife suffered cruelty in the hands of the respondent-husband in dissolving the marital life.

13. Having regard to the above, for this Court, while sitting against the reasoned judgment of the trial Court granting divorce, there is nothing to interfere. Accordingly, the Point No.1 is answered.

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POINT No.2

14. In the result, the appeal is dismissed. There is no order as to costs in the appeal.

15. Consequently, miscellaneous petitions, if any, pending in the appeal also stand closed.

R. SUBHASH REDDY, J

Dr.B.SIVA SANKARA RAO,J

March, 2015

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AND

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DATE: .03.2015

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