



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE TWENTY SEVENTH DAY OF JUNE
TWO THOUSAND AND TWENTY THREE

PRSENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

THE HONOURABLE SRI JUSTICE V SRINIVAS

CIVIL MISCELLANEOUS APPEAL NO: 1036 OF 2012

Between:

1. KAMANA VENKTA SURESH KUMAR S/o. Satyanarayana, Private Employee,
R/o. Chivatam, Tanuku Mandal, West Godavari District.

...PETITIONER(S)

AND:

1. KAMANA ANUSHA W/o. Venkata Suresh Kumar, Housewife,
C/o. Matta Gangadhararao, Commercial Traniee, Paper Mills, Sivapuram,
Narsipatnam, Visakhapatnam District.

...RESPONDENTS

Counsel for the Petitioner(s): SIDDARTH C B

Counsel for the Respondents: B SIVA KESAVA REDDY

The Court made the following: ORDER



*** THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU
AND
THE HON'BLE SRI JUSTICE V.SRINIVAS
+ CIVIL MISCELLANEOUS APPEAL No.1036 of 2012**

% Dated: 27-06-2023

Kamana Venkata Suresh Kumar ... appellant

and

\$ Kamana Anusha ... Respondent

! Counsel for the appellant : Sri C.B.Ram Mohan Reddy

^ Counsel for the respondent : Sri B.Siva Kesava Reddy

< GIST :

> HEAD NOTE :

? Cases referred :

1. 2017(2) AndhLD 185
2. AIR 2013 SC 2176
3. 2017 (1) Andh LD 272
- 4 2019 (5) Andh LD 172
- 5 AIR 2017 SC 2138
- 6 AIR 2014 SC 2881
- 7 (2007) 4 SCC 511
- 8 2008(7)SCC734
- 9 2005(7)SCC353
- 10 1996 SCALE (3) 293,
- 11 2020(18)SCC247
- 12 (2011) 4 SCC 240
- 13 AIR 2002 SC 591
- 14 AIR 2006 SC 1675
- 15 (2007(4) ALD 11(SC)
- 16 (1975) 2 SCC 326 : AIR 1975 SC 1534
- 17 [(1994) 1 SCC 337]
- 18 2023 SCC Online SC 544
- 19 [1950] 2 All ER 398
- 20 (2003) 6 SCC 334
- 21 2023 SCC Online SC 544



THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU
AND
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CIVIL MISCELLANEOUS APPEAL No.1036 of 2012

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DATE OF ORDER PRONOUNCED: 27.06.2023

THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU
AND
THE HON'BLE SRI JUSTICE V.SRINIVAS

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be Marked to Law Reporters/Journals. Yes/No
3. Whether Their ladyship/Lordship wishes to see the fair copy of the Judgment? Yes/No



THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU
AND
THE HON'BLE SRI JUSTICE V.SRINIVAS

CIVIL MISCELLANEOUS APPEAL No.1036 of 2012

JUDGMENT: *(per Hon'ble Sri Justice V.Srinivas)*

This appeal is directed against the decree and judgment dated 07.09.2012 in O.P.No.145 of 2009 passed by the learned Senior Civil Judge, Tanuku.

2. The appellant herein is the husband of the respondent. He filed a petition under Section 13(1)(c) of the Hindu Marriage Act, seeking divorce by dissolving their marriage, dated 17.05.2006. For the sake of convenience, the parties herein are referred to as they are arrayed in the Trial Court.

3. The case of the petitioner(husband) as per the averments made in the petition before the Trial Court, in brief, is as follows:

a. The marriage between the petitioner and the respondent took place on 17.05.2006 as per Hindu rites and customs at Rajahmundry and the same was consummated. She frequently used to leave the matrimonial home and stayed at Rajahmundry at the house of her adopted father without any intimation to him.

b. Ever since the marriage, the respondent developed anti-gonestic attitude towards him without any reason. After birth of his daughter, the respondent did not permit him to stay with her,



due to which, till date he did not even see the face of his child. The respondent had been neglecting him and leaving without any reasonable cause, it creates tension in his mind and suffering with mental agony. As the respondent is legally wedded wife, she did not cooperate to lead marital life and there was no cohabitation between them for the best reasons known to her.

c. The respondent used to harass and torture him on hearing the words of others, due to which he was unable to concentrate on his duties. Despite his repeated requests to join him, she refused to join. On the advice of elders, in the month of July 2008, she came to matrimonial house and stayed with him for a period of one month and started harassing him and she did not like to lead conjugal life. Later, she filed a dowry harassment case. When he requested her to join him, she refused. Hence, he filed O.P. seeking divorce.

4. The respondent/wife filed counter admitting their relationship, date of marriage, birth of female child and further stating as follows:

a. The petition is not maintainable as it was filed within a period of two years from the date of alleged desertion i.e., August 2008. After marriage, she joined with him with sare-saman worth of Rs.10,000/- and they lived happily for a period of two months.



b. Thereafter, the petitioner started neglecting her. He used to come to the house in midnight by consuming alcohol, abusing, and beating her by demanding dowry and suspecting her character.

c. After birth of female child on 10.04.2007, the appellant did not come to see the daughter despite her repeated requests. After six months, the petitioner taken them to his house and even then, he did not change his attitude and used to harass her for dowry amount.

d. When the mother of the petitioner tried to kill her daughter by mixing gammadene powder in the milk consumed by the child, the petitioner did not take care of her child. The appellant beat her indiscriminately without any fault, when she was pregnant, for which she lost her pregnancy.

e. When her brother questioned the highhanded acts of the petitioner, he demanded to pay Rs.5,00,000/- towards dowry or otherwise take away the respondent. When the matter is placed before the elders, petitioner agreed to look after her and child by giving an undertaking letter. On 26.07.2009, she joined him to lead conjugal life, but there is no change in his attitude and harassed her.

f. In August 2009, the petitioner beat the respondent by demanding dowry or give divorce and that the petitioner himself sent the respondent to her brother's house at Anakapalli through his



brother-in-law. Since then, the petitioner did not take back the respondent to his society without any reasonable cause and he voluntarily deserted her with an intention to marry another woman.

g. Later, she filed D.V.C. on the file of learned Additional Junior Civil Judge, Narsipatnam and as a counterblast to the said case, the petitioner filed the present O.P.

h. Since the allegations made by the petitioner would not constitute the cruelty or desertion as defined under the Act, she prayed to dismiss the O.P.

5. In the Trial Court, on behalf of the petitioner, P.Ws.1 to 3 were examined and got marked Exs.P.1 and P.2. On behalf of the respondent, R.Ws.1 to 5 were examined and no documents were marked.

6. On the material placed on record, the Trial Court, having come to conclusion that the petitioner failed to prove the cruelty and the respondent deserted him willfully and due to the fault of the respondent only, they are residing separately. The Court ultimately dismissed the O.P.

7. Aggrieved by the said dismissal order, the present appeal is preferred by the petitioner/husband.



8. Heard Sri C.B.Ram Mohan Reddy, learned counsel for the appellant and Sri B.Siva Kesava Reddy, learned counsel for the respondent.

9. The learned counsel for the petitioner submitted that the evidence placed on record before the Trial Court clinchingly established that the respondent deserted the matrimonial house without any reason on her own will, which itself entitles the petitioner for grant of divorce.

ii. that the evidence of the petitioner coupled with two independent witnesses categorically stated in the evidence that the respondent is residing with her adoptive father by leaving maternal home without any reason and that the respondent did not permit him to stay with her.

iii. that there is no cohabitation between the petitioner and the respondent for the reasons best known to her and she has been neglecting him as well not cooperating to lead marital life and living away with the petitioner without any reasonable cause amounts to cruelty, which is also causing mental agony.

iv. Though the petitioner requested the respondent to join, she refused his request and in the month of July, 2008, the respondent along with her child and brother, stayed for a period of one month, left his company after harassing the petitioner and she



did not like to lead conjugal life with the petitioner and that as there is no other go, the petitioner filed the present O.P. seeking divorce.

v. He relied upon the judgments in *K.Srinivas Sharma v. Smt.T.Vijaya Lakshmi*¹, *K.Srinivas Rao v. D.A.Deepa*², *Kalapatapu Lakshmi Bharathi v. Kalapatapu Sai Kumar*³, *Grandham Sridhar v. Grandham Jayavani*⁴, *Raj Talreja v. Kavita Talreja*⁵, *Dr.(Mrs.) Malathi Ravi, M.D v. Dr.B.V. Ravi, M.D*⁶, *Samar Ghosh v. Jaya Ghosh*⁷, *Satish Sitole v. Ganga*⁸, *Durga Prasanna Tripathy v. Arundhati Tripathy*⁹, *Kachana Devi v. Pramod Kumar Mittal*¹⁰ and *Rani Narasimha Sastry v. Rani Suneela Rani*¹¹.

10. Against the said contentions of the petitioner, learned counsel for the respondent submits that:

- i. since the petitioner filed this petition under Section 13(i)(c) of the Hindu Marriage Act, he has to prove the

¹ 2017(2) AndhLD 185

² AIR 2013 SC 2176

³ 2017 (1) Andh LD 272

⁴ 2019 (5) Andh LD 172

⁵ AIR 2017 SC 2138

⁶ AIR 2014 SC 2881

⁷ (2007) 4 SCC 511

⁸2008(7)SCC734

⁹ 2005(7)SCC353

¹⁰ 1996 SCALE (3) 293,

¹¹ 2020(18)SCC247



cruelty caused by the respondent but the same was not established by him.

- ii. in the Criminal Case filed by the respondent under Section 498-A I.P.C, the petitioner was acquitted as the prosecution failed to prove and as there is no sufficient evidence regarding ill-treatment and adamant behaviour of the accused, that itself is not a ground to consider the same in favour of the petitioner.
- iii. the respondent stated in her counter many facts about her staying away with the petitioner, which are not confronted nor elicited any answers in favour of the petitioner to prove that there is a cruelty on the part of the respondent and that there are no grounds to interfere with the order of Trial Court in dismissing the O.P.

11. In *H. Siddiqui v. A. Ramalingam*¹², the Apex Court held that “Being the final court of fact, the first appellate court must not record mere general expression of concurrence with the trial court judgment rather it must give reasons for its decision on each point independently to that of the trial court. Thus, the entire evidence must be considered and discussed in detail. Such exercise should be done after formulating the points for

¹²(2011) 4 SCC 240



consideration in terms of the said provisions and the court must proceed in adherence to the requirements of the said statutory provisions". In view of this ruling, this court has carefully verified the facts and evidence placed before the trial court.

12. Now the following points arise for determination in this appeal:

1. Whether the order of the Trial Court is liable to be set aside?
2. Whether the petitioner is entitled for decree of divorce by dissolving the marriage dated 17.05.2006?
3. To what relief ?

13. **POINT No.1 and 2:**

Before dealing with the core point, this court intends to narrate the material evidence placed on record for determination of the point.

14. The petitioner, who was examined as PW.1, in his chief examination, he reiterated the pleadings of the petition. In the cross examination, it was elicited that on his instructions, his counsel filed O.P. and without giving prior legal notice filed O.P. He had not filed any O.P. for restitution of conjugal rights. In June 2008, he went to Rajahmundry to see the respondent, but the respondent did not permit him to stay with her and since then, there was no cordial relationship or cohabitation between them. A female child by name



Lakshmi Sowjanya was born on 10.04.2008 at Rajahmundry. At that time, he was residing at Tanuku along with his parents in their own house. After the birth of his daughter, he went to the respondent and asked her to join him, but the respondent refused. Later he sent mediators by names Vallabhaneni Krishna, Shaik Jeelani and Guvvala KoteswaraRao and on mediation, the respondent came along with the said mediators in the month of August 2008 and stayed one month and left. It was further elicited that there are no proper reasons between him and the respondent to separate from matrimonial life except the short temper nature. The ceremony of anna prasanna of their daughter had performed at his house. The photos were confronted to the witness and he admitted that himself, his sister, and his mother were hugging his daughter. When a question was put forth by the respondent counsel that “whether the petitioner is willing to take the respondent if she intended to come and join him to lead conjugal life”, the petitioner expressed his willingness to take his daughter alone. A suggestion is made that the respondent was having love and affection even till today and ready to join if he stopped his cruel acts towards her, for which he denied.

15. Before discussing further, it is the specific pleading of the petitioner that there is a mental cruelty and in support of the said contention, the learned counsel placed reliance on the judgment



reported in **K.Srinivasa Sharma (referred to supra)**, wherein a specific observation was made at para-23 that to constitute cruelty the acts or omissions must be so serious to create reasonable apprehension in the mind of other spouse that it is unsafe for one spouse to live with the other. It was further observed that the legal concept of cruelty generally described as conduct of such character as to have caused danger to life, limb or health (bodily or mental) or as to give rise to a reasonable apprehension of such danger. It was further observed that it may be various acts or conduct complained of, by itself and in isolation to each other, do not amount to cruelty, but in their overall effect they may have amount to cruelty. Therefore, **it is obligatory on the part of Courts to take into consideration the cumulative effect of acts of a spouse and then decide whether those acts or omissions amount to either physical or mental cruelty if those acts complained would cause mental agony.** Such cruelty can be said to be a legal cruelty, which constitutes a ground to grant decree of divorce.

16. Considering the principle cited in the above judgment, the petitioner must have to establish cumulative effect of the acts of one spouse and decide whether those acts or omissions amount to either physical or mental cruelty and if those acts complained have



caused mental agony. Then such cruelty can be said to be a legal cruelty.

17. In the present case, no such evidence is put forth by the petitioner either through exhibits or through oral evidence. The above referred decision is clear, and no inference can be drawn to constitute cruelty is so serious to create an apprehension that it is unsafe for him to live with the respondent.

18. In this connection, it is beneficial to refer to the judgment of the Hon'ble Supreme Court in **Savitri Pandey v. Prem Chandra Pandey**¹³(divorce on the ground of cruelty). In the said case, the Apex Court while deciding the matter for grant of divorce on the ground of cruelty, held at para-24 as follows:

“Cruelty has not been defined under the Act but in relation to matrimonial matters it is contemplated as a conduct of such type which endangers the living of the petitioner with the respondent. Cruelty consists of acts which are dangerous to life, limb or health. Cruelty for the purpose of the Act means where one spouse has so treated the other and manifested such feelings towards her or him as to have inflicted bodily injury, or to have caused reasonable apprehension of bodily injury, or suffering or to have injured health. Cruelty may be physical or mental. Mental cruelty is the conduct of other spouse which causes mental suffering or fear to the matrimonial life of the other. 'Cruelty', therefore, postulates a treatment of the petitioner with such cruelty as to cause a reasonable apprehension in his or mind that it would be harmful or injurious for the petitioner to live with the other party. Cruelty, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of sensitivity of the petitioner and has to be adjudged on the basis of course of conduct which would, in general, be dangerous for a spouse to live with the other. The averments made in the petition and the evidence led in

¹³ AIR 2002 SC 591



support thereof clearly show that the allegations, even if held to have been proved, would only show the sensitivity of the appellant with respect to the conduct of the respondent which cannot be termed more than ordinary wear and tear of the family life.'

19. Considering the above cited judgment, it is clear that the spouse who is seeking divorce on the ground of cruelty should plead and prove that the respondent has so treated or manifested such feelings towards him which have inflicted bodily injury or caused reasonable apprehension of bodily injury, or suffering to have injured health and that the treatment of the petitioner with such cruelty is causing a reasonable apprehension in his mind that it would be harmful or injurious for him to live with the respondent. It is clear that “cruelty”, however, has to be distinguished from the ordinary wear and tear of family life. It cannot be decided on the basis of sensitivity of the petitioner and has to be adjudged on the basis of course of conduct which would, in general, be dangerous for a spouse to live with the other. These essential elements are conspicuously absent in the pleadings as well evidence of the petitioner.

20. The Hon’ble Supreme Court in *Naveen Kohli vs. Neelukohli*¹⁴ held that conduct has to be considered that in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. **It is difficult**

¹⁴AIR 2006 SC 1675



to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It was further held that the Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it is those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity, it has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure this as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of an unfounded variety, which can be subtle or brutal. It may be by words, gestures or by mere silence, violent or non-violent.

21. So, from the above, it is very clear that the Court is expected to weigh the gravity of the conduct and whether the conduct was such as that no reasonable person would tolerate it.



22. In *Samar Ghosh v. Jaya Ghosh*¹⁵, the Apex Court precisely gave illustrations of the acts amount to cruelty.

The following are some of the instances of human behaviour to amount to mental cruelty:

- 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 mentalcruelty.
- ii)
- iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable. Keeping in mind relevant considerations to decide cruelty and those two instances, applying to the facts of the present case, certainly serious or wild allegations made against the petitioner by the respondent that the petitioner is 'impotent' amount to cruelty, such baseless allegations would certainly amount denouncing his prestige among

¹⁵(2007(4) ALD 11(SC)



his friends and public and when the respondent telephoned to PW.5 and informed that the petitioner is impotent and incapable of performing sexual intercourse, certainly it would cause mental pain.

23. In the present case, after perusing the above judgments, vis-a-vis the evidence on record, it is clear that the petitioner could not make out such a serious allegation, which caused mental pain to him and unable to live with the respondent.

24. The petitioner examined one K.Venkateswara Rao as PW.2. He stated in chief examination that he had been residing in the adjacent house of the petitioners. He also attended the marriage of the petitioner said to be solemnized on 17.05.2006. Ever since the joining of the respondent, she used to leave the matrimonial home and stayed at her parents. He acted as mediator to pacify the disputes between the petitioner and the respondent. He further stated that there are no chances of their reunion. In the cross examination, it was elicited that he is a neighbor and not a relative of the petitioner. Except for the sounds, the inmates of the petitioner are not visible. He, being an employee in Anantha Lakshmi Textiles of Vadhuru Village used to spend more time outside only. It was further elicited that prior to marriage with the respondent, the petitioner already married another lady, and he



informed the same to the parents of the respondent and he never heard from the parents of petitioner about the particulars of earlier marriage of the petitioner and he did not know the reason why the petitioner took divorce and deserted his first wife. He had not personally seen the disputes, but he heard the same. After the birth of female child, the respondent never came to the house of PW.1.

25. For two reasons, his evidence cannot be considered. One is, he neither related to the parties nor had any personal knowledge about the disputes, because PW.2 himself admitted that he had not personally seen but he heard the disputes between PW.1 and the respondent. Hence, we could not give much weight to his evidence. The second reason is that PW.1 asserts that after birth of female child, the respondent came and lived with him for a period of one month, whereas PW.2 stated that the respondent never came to the house of the petitioner after birth of female child. Thus, this Court finds no trustworthiness in his evidence and the same is not creating any confidence. Moreover, he stated that he acted as a mediator to pacify the disputes but when questioned on that point, he was not able to speak when he made an attempt to settle the dispute nor he did not state the name of the other persons, who came along with him to the house of parents of the respondent rather, the persons,



who accompanied him for such settlement. For the said reasons this Court is unable to give much weight to the evidence of PW.2.

26. PW.3-S.Murali Krishna, is a friend of the petitioner. In his chief evidence, he stated that he attended the marriage of the petitioner with the respondent on 17.05.2006 at Rajahmundry and their marriage was consummated and blessed with a daughter by name Lakshmi Sowjanya. Due to non-cooperation of the respondent and living away from the petitioner without any reasonable cause, the mindset of the petitioner is creating tension. He further stated that the respondent used to harass the petitioner and was abusing him in the presence of outsiders and thereby tortured the petitioner. In the cross examination, it was elicited that he cannot say the time of marriage. He acted as mediator for four or five times for the disputes arose between the petitioner and the respondent. He went to the respondent's house two or three times from 2006 to 2008. Himself, petitioner and one Chowdary of Muddapuram along with four others went to the house for the marriage of PW.1 and the respondent but he cannot say the name of the said house owner. He never visited the house of the parents of the respondent. He observed the behavior of the respondent when he attended as a mediator at Muddapuram and at house of father of PW.1. It was suggested by the respondent that he never visited the house of



father of the petitioner and the respondent never seen him and the same were denied by PW.3.

27. On careful perusal of evidence of PW.3, this Court noticed that there are many contradictions rather no consistency even in his own evidence as well his evidence is not consistent with the evidence of PW.1. The petitioner in his evidence stated that one Vallabhaneni Krishna, Shaik Jeelani and Guvvala KoteswaraRao were cited as mediators for the marriage settlement, whereas PW.3, who was said to be friend of the petitioner stated that he also acted as mediator. Admittedly, PW.1 did not refer to his name as mediator. So, the version of PW.3 that he acted as mediator is a doubtful circumstance. Further, on careful perusal of his evidence, at one stretch he stated that himself, petitioner and one Chowdary of Muddapuram along with four others went to the respondent's house and at another stretch, he stated that he never visited the house of the respondent's parents. He stated at one stretch that he went to mediation only once later he stated four or five times, he acted as mediator for the disputes between the petitioner and the respondent. From the said contradictions, this Court is not able to believe the testimony of PW.1. In the Trial Court during cross examination, an attempt was made to test his personal knowledge of PW.3. He stated that the petitioner was working in D.O.C. Ltd and he



did not know his salary particulars. He did not know time, date and the year when the respondent left the matrimonial house but he stated that it is day time, which clearly show that PW.3 is not a reliable witness and as already stated above his evidence is not at all consistent with the evidence of PW.1. Hence, this Court is not inclined to consider his evidence about the alleged cruelty that was meted out by the petitioner in the hands of the respondent.

28. In *K.Srinivas Rao's case* (referred to supra), at paras 10 and 11, which are relevant, the Hon'ble Supreme Court 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.

"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) xxxxxxxxx

(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) xxxxxxxxx

(viii) xxxxxxxxx

(ix) xxxxxx xxx

(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) xxxxxxxxx

(xii) xxxxxxxxx

(xiii) xxxxxx xxx



(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.”

It is pertinent to note that in this case the husband and wife had lived separately for more than sixteen and a half years. This fact was taken into consideration along with other facts as leading to the conclusion that matrimonial bond had been ruptured beyond repair because of the mental cruelty caused by the wife. Similar view was taken in Naveen Kohli.”

29. From the above judgment, it is clear that 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, would come within the broad parameters of mental cruelty. In the present case, from the testimony of PW.1, except for a few instances, no cruelty or ill-conduct is found. In many of the judgments, the Hon’ble Apex Court stated that ill-conduct must be persistent for a lengthy period, the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, that the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty. Here, from the testimony of PW.1, this Court could not find such ill-conduct “persistently for fairly lengthy period” because the marriage was solemnized on 17.05.2006 and on 10.04.2008, a baby was born to



them. They were not living together always in this period also. In December 2009 itself, the petitioner filed the present O.P. seeking divorce on the ground of cruelty on the part of the respondent.

30. In all the above referred judgments, it was held that the conduct complained should be grave and weighty to conclude that the spouse cannot be reasonably expected to live with the respondent. In *Naveen Kohli's* case (referred to supra), it was categorically stated that the conduct takes into consideration the circumstances. As PW.1 categorically stated in his cross examination that there are no proper reasons between him and the respondent to separate from matrimonial life except short temper nature.

31. We also perused the testimonies of RWs.1 to 5. Among them, RW.1 in her chief examination reiterated her pleadings. Even in the cross examination also, nothing elicited except since the year 2008, they are living separately, and she categorically stated that she had not initiated any proceedings against the petitioner asking him to take her to lead marital life.

32. It is an admitted fact that she had not given any police report when she was demanded with a sum of Rs.5,00,000/- six months after her marriage, against her husband and his family members.

33. The respondent also examined her brother by name M.Gangadhar Rao. He categorically reaffirmed the case of RW1. In



the cross examination, it is elicited that he came to know about the incidents stated in his chief examination through his sister only and he had no personal knowledge with the said incidents. But he participated in some of the matrimonial incidents of his sister. Once he had received a phone call about harassment while he was working at Narsipatnam.

34. The respondent also examined one Guvvala Koteswara Rao(RW3), said to be another mediator, stated that after three years of marriage, the respondent came to him along with K.Satyanarayana and Shaik Jilani and made mediations and that the petitioner did not even come to see his child in spite of several requests and after six months of delivery, the petitioner took them to his house but the petitioner did not change his attitude. He categorically stated in his cross examination that he knows all the things mentioned in the chief examination within one year after the marriage. He came to know about the disputes between the petitioner and the respondent. He advised them not to give any complaint against the petitioner. So, the evidence of RW.3 does not speak of any alleged cruelty nor elicited by the petitioner that there is a cruelty on the part of the respondent, which compelling the petitioner to seek divorce.



35. PW3 had not stated anything against the respondent, nor is anything elicited from his evidence by the petitioner to speak that the respondent caused such a cruelty and which the petitioner could not reasonable except to leave such respondent. From the testimony of RW.3 did not even create a reasonable apprehension in the mind of the petitioner, and it is unsafe for him to live with the respondent. More so, it is clear from the testimony of PW.1 itself that on the advise of RW.3, he allowed the respondent to stay with him. If really such a character of cruelty on the part of the respondent, the petitioner could not have been accepted the advise of RW.3.

36. RW.4 is none other than the mother of the respondent. She categorically reaffirmed the case of the RW1 in her testimony. In the cross examination also, she categorically stated that at the first instance of demand of dowry and harassment, they did not give any police complaint. She categorically denied the suggestion that the respondent willfully and voluntarily left the matrimonial house, and she is giving her testimony only to support the respondent's case.

37. One K.Venkata Suresh Kumar was examined as RW.5. He is a third party. No doubt he stated that he along with one G.Koteswara Rao and Shaik Jilani went and tried to settle the matter but admittedly, his name is not referred by the petitioner. No doubt, the



petitioner did not name this witness as mediator, though he stated in his evidence that he made mediations and stated that he is one of the elders in the marriage of both sides. His evidence is however not much important in determining the point of cruelty on the part of the respondent.

38. On the whole, this Court does not find that there is a considerable amount of cruelty in the entire testimonies of witnesses. It may be true that the family of the petitioner was charged with dowry harassment and there was clean acquittal, but that by itself is not a sufficient ground to conclude that there is a “cruelty”. The petitioner relied upon the several judgments, but those judgments are not helpful to the case of the petitioner.

39. The trial Court also discussed the evidence of PWs.1 to 3. The respondent while discussing the points, the Trial Court at para-7 noted that PW.1 stated in his evidence as well in petition that the respondent came to him in the year 2008 and stayed about one month and left the matrimonial home and he filed the present petition in the year 2009 itself. It was also found prior to filing of the petition, the petitioner did not issue any legal notice to the respondent either to join him to lead marital life or filed any petition for restitution of conjugal life. The Trial Court also found that there are contradictions in the testimony of PW.2 as stated in



the above paras. The Trial Court also found contradictions in the testimony of PW.3.

40. It may be true that the respondent filed a dowry harassment case, and the petitioner might have been acquitted in the said case, but it is a settled principle that mere filing a case under Section 498-A I.P.C which was ended in acquittal is not by itself a ground for granting of divorce. In this connection, it is beneficial to refer to the judgment of the Supreme Court in *N.G. Dastane (Dr) v. S. Dastane*¹⁶, the Apex Court observed that "normally the burden lies on the petitioner to establish his or her plea that the respondent had meted out cruelty to the petitioner and that the standard of proof required in matrimonial cases under the Act is not to establish the charge of cruelty beyond reasonable doubt but merely one of weighing the various probabilities to find out whether the preponderance is in favour of the existence of the said fact alleged. As to what is the nature of cruelty that is necessary to be substantiated, it has also been pointed out that unlike the requirement under English law which must be of such a character as to cause danger to life, limb or health so as to give rise to a reasonable apprehension of such a danger, the court under the Act

¹⁶(1975) 2 SCC 326 : AIR 1975 SC 1534



in question has to only see whether the petitioner proved that the respondent has treated the petitioner with such cruelty as to cause a reasonable apprehension in mind that it will be harmful or injurious to live together, keeping into consideration the resultant possibilities of harm or injury to health, reputation, the working career or the like.

41. Besides in another judgment of the Apex Court in **V. Bhagat v. D. Bhagat**¹⁷ it was observed that “mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other and the parties cannot reasonably also be expected to live together or that **the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party.** It was also considered to be not necessary to prove that the mental cruelty is such as to cause injury to the health of the wronged party.....”.

42. In the recent judgment (Five Judge Bench) of the Hon’ble Supreme Court in **Shilpa Sailesh Vs Varun Sreenivasan**¹⁸, at para 36, referring to Three Judge Bench Judgement in **Naveen Kohli (supra)** and also another Judgment referred to the opinion of

¹⁷[(1994) 1 SCC 337]

¹⁸2023 SCC OnLine SC 544



Lord Denning, L.J. in *Kaslefsky v. Kaslefsky*¹⁹, that “if the door of cruelty were opened too wide, the courts would be granting divorce for incompatibility of temperament, but this temptation must be resisted, lest the institution of marriage is imperilled. At the same time, the bench felt that the concept of legal cruelty has changed according to the advancement of social concepts and standards of living. **Continuous ill-treatment, cessation of marital intercourse, studied neglect, indifference on the part of the spouse and allegation of unchastity are all factors that lead to mental or legal cruelty.** While doing so, this Court affirmed that a set of facts stigmatized as cruelty in one case may not be so in another, as cruelty largely depends on the kind of lifestyle. The parties are accustomed to or their social and economic conditions. Similarly, intention, it was observed, was immaterial as there can be cruelty even by unintentional conduct. Moreover, mental cruelty is difficult to establish by direct evidence and is to be deciphered by attending to the facts and circumstances in which the two partners in matrimony had been living. **On the question of irretrievable breakdown of marriage, which is not a ground for divorce under the Hindu Marriage Act, reference was made to the fault theory, which is hinged on an accusatorial principle of divorce. Excessive**

¹⁹[1950] 2 All ER 398



reliance on fault as a ground for divorce, the judges' opined, encourages matrimonial offences, increases bitterness and widens the ongoing rift between the parties. Once serious endeavours for reconciliation have been made, but it is found that the separation is inevitable and the damage is irreparable, divorce should not be withheld". ".....**Under the fault theory, guilt has to be proven, and therefore, the courts have to be presented with concrete instances of adverse human behaviour, thereby maligning the institution of marriage.** Public interest demands that the marriage status should, as far as possible, be maintained, but where the marriage has been wrecked beyond the hope of salvage, public interest lies in recognising the real fact. No spouse can be compelled to resume life with a consort, and as such, nothing is gained by keeping the parties tied forever to a marriage which has, in fact, ceased to exist".

43. In this background, the case relied upon by the learned counsel for the petitioner/appellant in ***Rani Narasimha Sastry's case*** (referred to supra), has no application to the case on hand and as facts therein are: "in Section 498-A IPC case the wife made an allegation that husband is alleging illicit relationship on the wife and also some egoistic problem turned into pervertism against each other adding bitterness further to see the bad of each other." In



those circumstances, the Hon'ble Supreme Court in *Rani Narasimha Sastry's* case found an acquittal under Section 498-A I.P.C, going to show that there is mental cruelty. But, the facts herein are totally different.

44. *Rani Narasimha Sastry's* case also relied upon another judgment of the Hon'ble Supreme Court in *Vijaykumar Ramachandra Bhate v. Neela Vijayakumar Bhate*²⁰, wherein also the allegations made in the written statement against each other constitutes mental cruelty and suggestions in the cross examination or by way of cross examination, leveling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship and these are main points considered. The Apex Court came to conclusion basing on such false allegations which causes mental pain and suffering as it would make it not possible for the petitioner to live with the respondent and found the petitioner able to establish false and cruel allegations which amounts to parties cannot reasonably be expected to live together or that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. Therefore, the case law relied upon by the petitioner is not supporting the facts or circumstances of this case.

²⁰(2003) 6 SCC 334



45. Importantly, in the case in hand, the Marriage O.P. was filed on 04.12.2009 and F.I.R./complaint was lodged on 22.03.2010. The Calendar Case was taken on file on 13.06.2013. The dowry harassment case is not even filed by the date of filing of this divorce petition, but same is urged in this appeal as an aspect of 'cruelty' on the part of the respondent. Even in the case of the offence under Section 498-A I.P.C, her allegation is that there was demand of additional dowry, which was agreed to be paid and allegation is that respondent did not cook food for the petitioner. No other serious allegations are pleaded. It is nowhere stated in the entire case under Section 498-A IPC that the marriage has also been irretrievably broken down and there is no hope for reconciliation. These facts/dates make a vital difference to the applicability of the cited case law to the present facts.

46. On the other hand, P.W.1 in his evidence categorically stated that respondent expressed her willingness to join him and also requested to take her and her daughter along with him and further admitted by P.W.1 that **there are no proper reasons in between him and respondent to separate from matrimonial life, except the short temper nature.** Thus, it is apparent that there is no such ground to conclude that the respondent caused such a cruelty for



which the petitioner could not be reasonably expected to live with respondent.

47. Thus, the evidence must be clear of the effect of filing a false case; its effect on the psyche of the spouse etc., The case must cause such mental pain and suffering as would make it not possible for the petitioner to live with the respondent and the conclusion must be that the parties cannot reasonably also be expected to live together.

48. On the question of irretrievable breakdown of marriage, recently in *Shilpa Sailesh Vs Varun Sreenivasan*²¹(Five Bench Judgment) at para 41 held that “Having said so, we wish to clearly state that grant of divorce on the ground of irretrievable breakdown of marriage by this Court is not a matter of right, but a discretion which is to be exercised with great care and caution, keeping in mind several factors ensuring that ‘complete justice’ is done to both parties. It is obvious that this Court should be fully convinced and satisfied that the marriage is totally unworkable, emotionally dead and beyond salvation and, therefore, dissolution of marriage is the right solution and the only way forward. **That the marriage has irretrievably broken down is to be factually determined and firmly established. For this, several factors are to be considered**

²¹2023 SCC OnLine SC 544



such as the period of time the parties had cohabited after marriage; when the parties had last cohabited; the nature of allegations made by the parties against each other and their family members; the orders passed in the legal proceedings from time to time, cumulative impact on the personal relationship; whether, and how many attempts were made to settle the disputes by intervention of the court or through mediation, and when the last attempt was made, etc. The period of separation should be sufficiently long, and anything above six years or more will be a relevant factor. But these facts have to be evaluated keeping in view the economic and social status of the parties, including their educational qualifications, whether the parties have any children, their age, educational qualification, and whether the other spouse and children are dependent, in which event how and in what manner the party seeking divorce intends to take care and provide for the spouse or the children. Question of custody and welfare of minor children, provision for fair and adequate alimony for the wife, and economic rights of the children and other pending matters, if any, are relevant considerations. We would not like to codify the factors so as to curtail exercise of jurisdiction under Article 142(1) of the Constitution of India, which is situation specific. Some of the



factors mentioned can be taken as illustrative, and worthy of consideration.

49. An attempt was made to argue that the spouses are living apart for more than a decade; that there is no hope for reconciliation and that the marriage has irretrievably broken down. This Court is also unable to accept this submission. Irretrievable breakdown is not a ground as of now to grant a decree of divorce. The judgments passed by the Hon'ble Supreme Court are all under Article 142 of the Constitution of India. This power to declare a marriage as irretrievably broken down and to grant a divorce is available only to the Hon'ble Supreme Court. It is an unfettered independent discretion conferred on the Hon'ble Supreme Court alone.

50. The Trial Court also found that the petitioner could not prove his case and the evidence placed before the Court is not sufficient to grant divorce on the ground of cruelty. Hence, this Court also does not differ with the opinion expressed by the Trial Court in reaching the conclusion that the petitioner failed to establish the cruelty meted out of him in the hands of the respondent and that he is unable to live any longer with her.



51. For the foregoing reasons, we are of the view that the petitioner has not established with requisite proof that he was subjected to cruelty at the hands of the respondent or that is entitled for divorce on that ground. Hence, and appeal is liable to be dismissed.

52. **POINT NO.3:**

Accordingly, the Civil Miscellaneous Appeal is dismissed confirming the decree and judgment dated 07.09.2012 in O.P.No.145 of 2009 passed by the learned Senior Civil Judge, Tanuku. There shall be no order as to costs.

53. Interim orders granted earlier if any, stand vacated.

54. Miscellaneous petitions pending if any, stand closed.

JUSTICE D.V.S.S.SOMAYAJULU

JUSTICE V.SRINIVAS

Date: 27.06.2023

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L.R. Copy to be marked.



THE HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

AND

THE HON'BLE SRI JUSTICE V.SRINIVAS

CIVIL MISCELLANEOUS APPEAL No.1036 of 2012

DATE: 27.06.2023

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