
(2003) 09 AP CK 0024

In the Andhra Pradesh High Court

Case No : Appeal Against Order No. 3126 of 2000

Alapati Venkayamma

APPELLANT

Vs

Alapati Kesava Rao and Another

RESPONDENT

Date of Decision : 15-09-2003

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)

Citation : (2004) 3 ALT 247 : (2004) 2 CivCC 505 : (2004) 2 DMC 275 : (2004) 4 RCR(Civil) 170

Hon'ble Judges : T. Meena Kumari, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : P. Gopal Das, for the Appellant; H. Srinivasa Rao, for the Respondent

Final Decision : Allowed

Judgement

S. Ananda Reddy, J.—This appeal is filed by the wife, who is the first respondent in HMOP No. 57 of 1997, which was filed by the 1st respondent herein, on the file of the Principal Senior Civil Judge, Guntur, seeking dissolution of the marriage between the appellant and the 1st respondent on the ground specified u/s 13(1) (i) and (ia) of the Hindu Marriage Act, 1955.

2. The brief facts of the case are that the marriage of the appellant and the 1st respondent was solemnized on 24-6-1983 in the village of the appellant-wife i.e., Harischandrapuram. Their marriage was consummated immediately, and during their wedlock, they were blessed with two daughters and a son. The 1st respondent-husband is an illiterate person and the appellant studied up to Tenth class. The 2nd respondent is the alleged paramour, who is no other than the son of the 1st respondent's elder brother. According to the 1st respondent, the appellant-wife left the matrimonial home in June 1996 and thereafter she filed O.S.No. 388 of 1996 on the file of the Additional Sub-Court, Guntur, on her behalf and on behalf of her children for maintenance, and obtained injunction restraining the 1st respondent herein from alienating the suit schedule property. The 1st respondent in his petition also alleged that the appellant subjected him

to mental cruelty by insulting him in the company of her brothers and other relations and was also managing the family on the ground that the 1st respondent was an illiterate and was also lending money by obtaining promissory notes in her name. It is stated that the appellant began to have sexual intercourse with others, especially with the 2nd respondent. On one day, when the 1st respondent found the appellant was not having gold jewellery and when he questioned, she represented that the 2nd respondent took the gold jewellery, and to bring them back she went to the fields. Thereafter, the 1st respondent went to the fields and found the appellant and the 2nd respondent were sitting and talking each other. When he questioned them, the 2nd respondent threatened him at knife point. Thereafter, the appellant-wife came to the house, took the children, and went away to her parents' house, handing over the pro-notes in her name. It is further stated that the 1st respondent got opened the box and found two letters in the handwriting of the 2nd respondent written to the appellant and they were got read over by him through his elder brother and confirmed that the appellant was leading adulterous life with the 2nd respondent. Hence, the present petition seeking divorce.

3. The appellant-wife, who was the 1st respondent in the O.P., filed her counter denying the allegations made by the husband in the petition. She stated that the 2nd respondent is a son by relation, and so the alleged illegal intimacy between the mother and son is unknown, highly heinous, absurd and it was invented only for the purpose of the present petition. The 1st respondent-husband was guilty of gross negligence to maintain her and her children, and he was alienating the joint family properties without just cause, depriving the shares of the children and therefore, she was constrained to file the suit for partition. From the very beginning, the husband was harassing and subjecting her to cruelty by torturing and beating etc. As she was unable to bear the cruelty, she was constrained to leave the matrimonial house in the interest of her children and take shelter in her parents' house. The attitude of the 1st respondent exposes that he wants to ruin the appellant-wife by setting up a false plea of illegal intimacy and also to ruin the minor children, by alienating the joint family properties, acting detrimental to the interest of the children. The alleged two letters, that were found in the handwriting of the 2nd respondent addressed to her, were concocted, false, and were brought into existence for the purpose of the present petition. Therefore, she prayed for dismissal of the petition filed by her husband.

4. On behalf of the 1st respondent/ husband, he was examined as P.W.1 and his elder brother was examined as P.W.2; and Exhibits A-1 to A-7 were marked. On behalf of the appellant/wife, she was examined as R.W.1 and got marked Ex.B-1 pro-note.

5. The learned Senior Civil Judge after considering the evidence and the pleadings, observed that the recitals in Ex.A-1 letter, written by the 2nd respondent may not indicate direct circumstances that he is having illicit intimacy with the appellant, but (sic) the relationship other than the normal relationship

like mother and son. The observation with reference to Ex.A-2 is also to the same effect. It was further observed that even otherwise in the normal circumstances, a man, who came to know or has reason to suspect the fidelity of his wife, would certainly suffer mental agony. Therefore, the learned Senior Civil Judge accepted the claim of the husband and allowed the petition dissolving the marriage by a decree of divorce.

Aggrieved by that, the appellant/wife has come up with the present appeal.

6. The learned counsel for the appellant contended that the court below has committed grave error in accepting the interested evidence of the 1st respondent/ husband and his brother, and also the concocted evidence of Exhibits A-1 and A-2, letters, alleged to have been written by the 2nd respondent. The learned counsel also contended that there is no other independent evidence to prove any of the allegations against the appellant/wife. The learned counsel also contended that there are innumerable inconsistencies between the pleadings, evidence, and the contentions, and therefore, even on that count also the decree and Judgment passed by the court below is unsustainable. The learned counsel also contended that except the alleged concocted letters, which are marked as Exs.A-1 and A-2, said to have been written by the 2nd respondent to the appellant, there is no other evidence, direct or otherwise. The learned counsel also contended that it was not even proved that these letters were written by the 2nd respondent by producing any admitted handwriting of the 2nd respondent. It is also the case of the appellant that the other allegations are vague and are not specific in order to hold that the appellant was guilty of adulterous conduct. The learned counsel also contended that by merely relying upon two alleged letters, it is not open to the court below to conclude that the appellant had illegal relations with the 2nd respondent, especially, with a person, who is related to the appellant as son. The oral evidence adduced on behalf of the 1st respondent/ husband was also inconsistent and therefore, the order of the court below is liable to be set aside.

7. The learned counsel in support of his contentions relied upon the following decisions:--

Chandra Mohini v. Avinash Prasad; AIR 1967 SC 581; J. Sadhu Amma v. J. Satyanarayana; 1967 (1) An.W.R. 179 (D.B.); V. Veera Vara Prasad v. Vasireddy Vasumathy 1994 (2) LS. 213 ; A. Hemamalini Vs. A. Pankajanabham and Another, .

8. The learned Counsel for the first Respondent, on the other hand, supported the Judgment and decree passed by the Court below. The learned counsel reiterated the allegations that are made in the petition as well as in the evidence of P.W.1 and contended that as the court below has accepted the evidence as sufficient to hold that the appellant was leading immoral life, and hence, the decree granted by the court below does not call for any interference.

9. From the above rival contentions, the issue to be considered is whether the

findings arrived at, and the order of dissolution of the marriage of the appellant with the 1st respondent granted by the court below is sustainable.

10. The 1st respondent/husband filed the petition seeking divorce on the ground that the appellant/wife was leading immoral life, having illicit intimacy with the 2nd respondent as well as with some others and also treated him cruelly. In order to decide the issue, it would be proper to refer to the pleadings, how they were alleged by the 1st respondent/husband. In the petition, the husband admitted that he was an illiterate, while the appellant/wife studied up to tenth class. It is also admitted that they were blessed with three children. It is alleged that the wife was behaving disrespectfully towards him, as he was not an educated person. It was alleged that he was insulted before their relatives and others. She also took charge of the family affairs and used to lend money including to her own father and obtained three pro-notes, to a tune of Rs. 30,000/-. It is stated that she began to have sexual intercourse with others, especially with the 2nd respondent, who is no other than the son of the 1st respondent's elder brother. It was suspected and was sought to be corrected, but in vain. Ultimately, one day, when she was not having jewellery, the gold chain, the earrings, he questioned her about the said ornaments. She represented to him that the said jewels were taken by the 2nd respondent, and promising to bring them back, she went to the fields. The 1st respondent also accompanied her. He saw both the appellant and the 2nd respondent sitting and talking. Then the 1st respondent questioned him about the jewellery. Then the 2nd respondent brandished a knife and attempted to stab the 1st respondent/husband. Therefore, he had run back for safety. She came back to the house, took the children and went away to her parents house, handing over the pro-notes in her name and went away in June, 1996. After this, when the petitioner/husband opened the box in the house, he noted two letters with the handwriting of the 2nd respondent, whose contents confirmed the adulterous conduct of the appellant/wife. In the evidence, the 1st respondent/husband, who was examined as P.W.1 stated that the appellant herself voluntarily left the marital home, taking the three children along with her. She has also taken cash and gold ornaments along with her. On the day she left the house, he enquired with the wife about her gold chain and ear-studs, which she always wear, but were not found. She told him that they were taken away by the 2nd respondent. She did not give any reasons for taking these ornaments by 2nd respondent, and stating that she would bring back those gold ornaments, went to the fields of P.W.2, who is the father of the 2nd respondent. She did not turn up, and having waited for some time, he went to the fields and found that the appellant and the 2nd respondent were sitting together in the field. Then the 1st respondent enquired them about the gold jewellery. Then the 2nd respondent attempted to stab him with a knife. Therefore, out of fear, he returned back to the house. Thereafter, he took his brother P.W.2 and one Sri Pedda Rao to the field. By the time they went to the field, the 2nd respondent alone was present and he told that the appellant came and went away. By the time P.W.1 went to house, the appellant went to the

house in a different route and left the house along with the children, cash, and gold ornaments. The 1st respondent did not take her box along with her, and after opening the said box, he found three pro-notes and two letters, Exs.A-1 and A-2. P.W.1 being an illiterate person, he got the said letters read over by his brother P.W.2. After going through the said letters, P.W.2 informed him that the said letters reveal illicit intimacy between the appellant and the 2nd respondent. When P.W.1 enquired about the handwriting in the said letters, P.W.2 told him that they were written by the 2nd respondent only. It is also stated that with reference to three pro-notes executed by the father of P.W.1 (sic R.W. 1) in favour of the appellant, he got issued a legal notice in November 1996 demanding repayment.

P.W.2, father of the 2nd respondent, in his evidence, stated that in the month of June 1996, the appellant along with the children left the house of the 1st respondent/ husband. On that day, in between 8 and 10 a.m., the 1st respondent came to his house and told him that the 2nd respondent took away the gold ornaments of the appellant and he asked the appellant to bring the said jewellery. Then the appellant went to the 2nd respondent, who was in the field, stating that she would bring the ornaments. As she did not turn up, he went to the field, where he saw the appellant and the 2nd respondent sitting there and that he asked both of them to give the jewellery of the appellant, but, thereupon the 2nd respondent quarrelled with P.W.1 and threatened him with a knife to kill him and therefore, P.W.1 came to the house of P.W.2. It is also stated that P.W.1 did not tell him that the 2nd respondent had taken the said jewellery from the appellant by committing theft or with the consent of the appellant. Thereupon, P.W.2 along with his nephew, Sri Pedda Rao and P.W.1 went to the fields, where the 2nd respondent was alone present. It is stated that when they questioned the 2nd respondent about the jewellery, he stated that he does not know about the jewellery of the appellant; and when they asked him as to why the appellant came to him to the fields, the 2nd respondent told that he and the appellant were having illicit intimacy and pleaded to excuse him for the mistake committed by him. When they returned back to the house of P.W.1, they did not find the appellant and her children. Thereafter, they have searched her box to find out whether she has taken any gold ornaments or money, and found two letters, Exs.A-1 and A-2. They are in the handwriting of the 2nd respondent. In the cross-examination, P.W.2, however, admitted that he does not know to whom the said box belongs, from which Exs.A-1 and A-2 were taken out.

The appellant was examined as R.W.1. She stated that her husband (P.W.1) used to beat her very often, while she was staying with him out of suspicion. In spite of it, she patiently lived with him for 15 years. But, there was no change in his attitude and behaviour, and, on the other hand, it was increased. In the month of June 1996, the 1st respondent necked out the appellant and her children out of his house. The 1st respondent used to demand the appellant to bring money from her parents. But she did not accept the same. The 1st respondent made attempts to sell 7-00 acres of his, ancestorsland, which was opposed by the

appellant. Therefore, P.W.1 used to beat and harass her, and finally necked her along with the children out of the house. She has denied that she has any illicit relations either with the 2nd respondent or with any other person, as alleged. It is stated that P.W.2 borrowed money from the 1st respondent for which he has executed a promissory note in the name of the 1st respondent. In the cross-examination, the appellant denied that the 2nd respondent has ever written any letters to her. It is further stated that in 1996, she left the house of the 1st respondent and went to the house of her parents and within one month she filed the suit claiming maintenance as well as for partition of the family properties on behalf of children. Three months after filing of the said suit, the 1st respondent filed the present O.P., seeking divorce. In addition to the above, the 1st respondent, who is the petitioner in the O.P., issued a legal notice to the appellant's father, demanding repayment of certain amount alleged to have been borrowed by him on the promissory note executed in favour of the appellant. In the said notice, the 1st respondent only referred that differences arose between the appellant and the 1st respondent, and she left his house with the children to the house of the appellant's father. It is also admitted that even while leaving the house of the 1st respondent, she has handed over the promissory notes to him.

11. A perusal of the above pleadings and evidence clearly shows that there is any amount of inconsistencies, apart from unacceptable evidence to hold that there was illegal intimacy between the appellant and the 2nd respondent. The 1st respondent stated in the petition that he suspected the appellant and tried to correct her, but in vain, and after she left the house, he found two letters in the box, which were stated to have been written by the 2nd respondent. There is absolutely no explanation how he came to know that those two letters, Exs.A-1 and A-2, were written by the 2nd respondent and they were written to the appellant, especially when the 1st respondent is an illiterate person, who is not even familiar with the handwriting of the 2nd respondent. When it came to the evidence, he stated that he has taken those two letters to P.W.2, his elder brother, who confirmed that they were written by his son, 2nd respondent to the appellant. But, P.W.2 stated that after returning from the field, he went to the house of the 1st respondent along with him, when those two letters were found in the box and he does not know to whom the said box belongs from which Exs.A-1 and A-2 letters were taken out. Further, though it is stated that there is another third person, he was not examined on behalf of the husband. There is no other independent evidence to prove the said letters. In fact, the 1st respondent, in his evidence as P.W.1, did not state anything about the alleged illegal contacts or illegal intimacy of the appellant with the 2nd respondent. Further, even according to him when he went to the field, the appellant and the 2nd respondent were sitting and talking each other. From that nothing can be inferred, even if it is a fact that they were sitting and talking each other. Further, though the 1st respondent heavily relied upon the letters, Exs.A-1 and A-2, which were accepted by the court below, we do not find that there are any

justifiable circumstances to accept the said evidence. First of all, there is no independent reliable evidence to prove the source of those letters. It is only the 1st respondent and his brother, who were examined as P.Ws.1 and 2, who alleged that the letters were available in the box, said to have been belonged to the appellant. However, P.W.2 admitted in his evidence that he does not know to whom the said box belongs. It was not elicited from R.W.1 about owning the said box. The husband and his brother along with another, who have gone to the fields, where respondent No. 2 was present, did not question his alleged action of trying to stab P.W. 1. In fact, at the time of hearing, we have even verified the handwriting in the said letters, apart from the fact that such letters could not be sufficient to prove that there was illicit relationship between the appellant and the 2nd respondent. Hence there is no merit in the contention of the 1st respondent/petitioner that the appellant/wife was living in adulterous life.

12. The learned counsel for the appellant relied upon the decision of the Apex Court in the case of Chandra Mohini v. Avinash Prasad (1 supra), wherein it was held that-

"The mere fact that some male relation writes love letters to a married woman, does not necessarily prove that there was any illicit relationship between the writer of the letters and the married woman, who received them."

Similarly, a Division Bench of this Court in the case of J. Sadhu Amma v. J. Satyanarayana (2 supra) had an occasion to consider similar circumstances, and held that --

"The mere fact of having been found in the company of another person is not sufficient to infer an act of adultery or sexual intercourse."

In the case of V. Veera Vara Prasad v. Vasireddy Vasumathy (3 supra) another Division Bench of this court dismissed the appeal filed by the husband, which was filed against the order of the court below, dismissing the petition for dissolution of the marriage on the ground of adultery and desertion. The allegation was that the wife was talking to a man, when she was in her parents' house, where she was residing separately from her husband. The Division Bench held that the same does not amount to illicit intimacy with the third party and therefore, the husband is not entitled for decree of divorce.

In the case of A. Hemamalini v. A. Pankajanabham and Ors. (4 supra), another Division Bench of this Court, while setting aside the decree of dissolution of the marriage granted in favour of the husband in an appeal filed by the wife, held that the evidence adduced on behalf of the husband being self-contradictory, unsatisfactory and unnatural, he is not entitled for decree of divorce.

13. If the facts of the present case are considered in view of the principles laid down in the above cited decisions, we do not find that there are any acceptable and reliable evidence to come to the conclusion that the 1st respondent/petitioner had proved his case by producing reliable and acceptable evidence that

the appellant had illegal intimacy with the 2nd respondent or with any other person, as well as to prove that the appellant had treated the 1st respondent with cruelty. In the absence of any such acceptable and reliable evidence, the conclusion arrived at by the court below is not sustainable and the order and decree of the Court below are set aside.

14. In the result the appeal is allowed and the O.P. filed by the husband is dismissed. No costs.