
(2010) 10 AP CK 0010

In the Andhra Pradesh High Court

Case No : Civil Miscellaneous Appeal No. 682 of 2001

Methuku Suresh @ Suresh Sagar

APPELLANT

Vs

Smt. Methuku Anuradha

RESPONDENT

Date of Decision : 21-10-2010

Acts Referred:

Hindu Marriage Act, 1955 — Section 13(1)
Penal Code, 1860 (IPC) — Section 498A

Citation : (2011) 2 ALT 389 : (2011) 4 CivCC 196

Hon'ble Judges : D.S.R. Varma, J; B. Chandra Kumar, J

Bench : Division Bench

Advocate : M. Bhaskara Lakshmi, for the Appellant; T. Pradyumna Kumar Reddy, for the Respondent

Final Decision : Allowed

Judgement

B. Chandra Kumar, J.—This appeal is directed against the order and decree dated 22.01.2001 passed in OP No. 121 of 1998 by the Judge, Family Court at Secunderabad, whereby and whereunder, the petition filed by the Appellant / husband under Sections 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955, seeking a decree of divorce by dissolving the marriage with the Respondent / wife was dismissed. For the sake of convenience, the parties will be referred to as they were arrayed before the Court below.

2. The brief facts of the case are as follows:

The Petitioner is the husband of the Respondent. Their marriage was solemnized on 04.02.1990 as per Hindu rites and customs at Hyderabad. After the marriage, the Respondent joined the Petitioner and lived with him in his house for about one year. Then the Respondent went to her parents house for delivery. On 20.11.1990, the Respondent gave birth to a male child, but did not return to her matrimonial house. Then the Petitioner went to his in-laws house and requested them to send the Respondent to his house, but they refused to send her and after about one year, they themselves brought and dropped her at his house.

Thereafter, the Respondent was frequently going to her parents house without informing him and she used to demand separate residence and on account of her attitude, his parents allotted a separate portion in their house and he, along with the Respondent, was residing separately in that portion. The Respondent again started insisting him to take a separate house near her parents house, but somehow, he adjusted with her in the interest of his family. The Respondent gave birth to a female child on 12.04.1993. The Respondent lodged a false criminal complaint against him on 07.03.1995 and since then, they are residing separately and the Respondent has not made any efforts for reconciliation and as there is no other alternative, he is seeking dissolution of marriage on the ground of willful desertion and cruelty.

3. The Respondent's case, as seen from the record, is that at the time of marriage, the Petitioner was presented with a dowry of Rs. 70,000/- and 25 tulas of gold ornaments besides other articles. However, the Petitioner demanded additional dowry of Rs. 50,000/- and started harassing her for additional dowry. She gave birth to a male child at her parents house, but, the Respondent refused to take her back to his house and a Panchayat was held at Indira Park, Hyderabad, and then she again joined the Petitioner. The Petitioner had pledged her ornaments and utilized that money and though her father gave Rs. 50,000/- to the Petitioner, he did not release the pledged gold ornaments. The Petitioner beat her indiscriminately on 07.03.1995 at about 09:30 A.M. and driven her out from his house and thereafter, her parents came and took her to their house and then she lodged the police complaint and she was also referred to hospital for medical treatment.

4. On behalf of the Petitioner, the Petitioner himself was examined as P.W.1 and P. Ws.2 and 3 were marked. On behalf of the Respondent, the Respondent herself was examined as R.W.1 besides examining R.W.2 and Exs.B.1 to B.4 were marked.

5. The Court below, on appreciation of oral and documentary evidence on record, came to the conclusion that the Petitioner failed to prove that the Respondent treated him with cruelty and further observed that it is the Petitioner who had driven away the Respondent from his house and due to the conduct of the Petitioner, the Respondent has been residing in her parents house and, therefore, it cannot be said that the Respondent had been residing at her parents house without any reasonable cause and, therefore, the Petitioner failed to prove that the Respondent deserted him without any reasonable cause or ill-treated him and holding so, the Court below dismissed the petition. Aggrieved by the same, present appeal has been filed.

6. Smt M. Bhaskara Lakshmi, learned Counsel for the Petitioner, submitted that from the beginning, the Respondent demanded separate residence and when the Petitioner could not take a separate residence near to the house of her parents, she started going to her parents house without informing him. It is also her contention that after the Respondent gave birth to a male child, she did not

return to the house of the Petitioner and in spite of the best efforts made by the Petitioner, the Respondent remained in her parents house for about one year and then, she joined the Petitioner and gave birth to a female child on 12.04.1993 and finally left the house of the Petitioner on 07.03.1995 and lodged a false complaint against him. Thus, her main submission is that lodging a complaint u/s 498A IPC itself amounts to treating the Petitioner with cruelty and living separately from the Petitioner from 07.03.1995 without any reasonable cause amounts to willful desertion and that the Court below failed to consider the evidence in proper perspective and committed error in dismissing the petition.

7. Per contra, Sri T. Pradyumna Kumar Reddy, learned Counsel for the Respondent, submitted that the Respondent never deserted the Petitioner and that it is the Petitioner who had ill-treated the Respondent and beat her and driven her out of his house and that she is forced to live in her parents house from 07.03.1995 onwards and the ingredients of Section 13(1)(ib) of the Hindu Marriage Act, 1955, are not proved since there is no willful desertion and that there is no evidence to show that the Respondent had ill-treated the Petitioner and that there are no grounds in the appeal and the appeal is liable to be dismissed.

8. Having considered the above rival contentions, the only point that arise for consideration in this appeal is whether the Petitioner / husband is entitled for a decree of divorce on the ground of (a) cruelty; and (b) willful desertion.

9. It has to be seen whether the Petitioner has proved that the Respondent treated him with cruelty or willfully deserted him. What amounts to willful desertion and what is the real intention of the parties has to be analyzed from the evidence. The conduct of the parties during relevant period and even subsequent conduct may reveal the real intention of the parties. When there is harassment for dowry, a wife has every right to lodge a complaint u/s 498A IPC. But, continuing such proceedings and filing a revision challenging the judgment of acquittal of her husband shows that she has no intention to live with her husband. When a wife, though left the company of the husband, may be on a reasonable cause, continues to stay away from him and wants to send her husband to prison, it shows that she has no inclination to live with him under any circumstances and the same may amount to willful desertion in a given circumstance of a case.

10. It is not in dispute that the marriage of the Petitioner and the Respondent was solemnized on 04.02.1990 at Hyderabad. As seen from the evidence, the father of the Respondent is doing cloth business and he has eight cloth shops at different places in Hyderabad. The Respondent has two sisters and four brothers . . She is the youngest daughter of her parents. The elder sister of the Respondent and her husband are residing in her parents house. It appears that after the marriage, the Respondent joined the Petitioner and that they were living in the house of the Petitioner. It is the case of the Petitioner that the Respondent was demanding separate residence and that at the time of her

delivery, she went to her parents house and did not join him for about one year. It is also his case that he went to his in-laws house and requested them to send the Respondent along with him to his house but they refused to send her. It appears that a Panchayat was held at Indira Park, Hyderabad, for amicable settlement and after the said Panchayat, the Respondent joined the Petitioner and gave birth to a female child on 12.04.1993. As seen from the evidence, it appears that the Petitioner and the Respondent lived together till 07.03.1995 and on that day, the Respondent lodged a complaint with the police against the Petitioner alleging that he ill-treated her demanding additional dowry and caused injuries to her and it also appears that she was referred to hospital for medical treatment.

11. Admittedly, the Petitioner and the Respondent have been residing separately from 07.03.1995 onwards. It has to be seen that when a suggestion is given to the Petitioner that the Respondent is ready to join him provided he takes a separate residence and promises not to harass her for more dowry, the answer given by the Petitioner is that since the Respondent filed a false case against him and harassed him and deserted him from the year 1995, he is not prepared to take her back. Thus, it appears that the whole trouble started when the Respondent lodged a complaint with the police u/s 498A IPC on 07.03.1995 against the Petitioner. As seen from the above suggestion given to the Petitioner, it is clear that the Respondent was insisting for separate residence. According to the Petitioner, he is the elder son to his parents and that his father is aged about 68 years and is a heart-patient and his mother is aged about 63 years and that he has to look after his age old parents and in the above circumstances, the Respondent is not justified in demanding separate residence. Though the Petitioner claims that his parents allotted separate portion to the Respondent in their house and that they started living in that portion, but admittedly, he has not made such averment in his petition.

12. The case of the Respondent is that the Petitioner was demanding additional dowry of Rs. 50,000/-. Admittedly, the Respondent has not examined even her father in support of her contention. The only witness examined on her behalf is R.W.2 who is a neighbour to her father. Even R.W.2 also did not whisper anything about the demand of additional dowry. Admittedly, a Panchayat was held at Indira Park, Hyderabad, and after the said Panchayat, the Respondent joined the Petitioner. It is not the case of the Respondent that any amount of additional dowry, as demanded by the Petitioner, was paid before she joined the Petitioner after the mediation at Indira Park, Hyderabad. Therefore, it appears that the allegation of demand of additional dowry is not proved and as such, the allegation of demand of additional dowry appears to be incorrect. Similarly, except the evidence of Respondent, there is no evidence to show that her father paid an amount of Rs. 50,000/- to the Petitioner to release the pledged gold ornaments.

13. Admittedly, the Respondent lodged a complaint with the police against the

Petitioner u/s 498A IPC on 07.03.1995 and the Petitioner was arrested and he was remanded to judicial custody. It is also not in dispute that the Respondent filed M.C. No. 86 of 1998 and that she has been awarded maintenance amount. Learned Counsel for the Petitioner submitted that the Petitioner was convicted for the offence u/s 498A IPC in C.C. No. 823 of 1995 by the XXII Metropolitan Magistrate and was sentenced to undergo Rigorous Imprisonment for two years and that when the Petitioner filed an appeal, the appellate Court set aside the conviction and acquitted the Petitioner. It is also submitted that then the Respondent filed a revision in this Court challenging the acquittal and the said revision has been dismissed on 31.01.2007. It is also her submission that even subsequent events have to be taken into consideration to see whether the Respondent had any inclination to join the Petitioner and whether her conduct amounts to willful desertion.

14. The conduct of the parties has to be taken into consideration to know the intention of the parties. Sometimes even the subsequent conduct also speaks about the intention of the parties. In the instant case, admittedly, the Respondent lodged criminal complaint against the Petitioner. The Respondent might be is justified in lodging complaint against the Petitioner for the incident that occurred on 07.03.1995, but, was she justified to allege dowry harassment. Anyhow, the subsequent proceedings reveal that the Petitioner was convicted by the trial Court and he was sentenced to undergo Rigorous Imprisonment for two years. Subsequently, on appeal, the said conviction was set aside. After the conviction was set aside, the Respondent again filed a revision challenging the acquittal of her husband. This shows that the Respondent wants to see that her husband is ultimately sent to prison. If at all the Respondent is willing to join the Petitioner, she would not have taken such a drastic step. It has to be seen that the Respondent has been residing in her parents house from 07.03.1995 and if we take into consideration the overall facts and circumstances of the case, it appears that the Respondent has no intention to join the Petitioner at least after 07.03.1995 and, therefore, the subsequent conduct of the Respondent, if taken into consideration, proves willful desertion. It has to be seen that during the pendency of this appeal, the matter was referred to Lok Adalat for settlement and the Secretary, Andhra Pradesh High Court Legal Services Committee sent a report stating that the matter could not be settled in Lok Adalat.

15. On a critical analysis of the evidence on record, we are of the considered view that though the demand of separate residence by the Respondent may not amount to treating the Petitioner with cruelty and the allegation that the Respondent treated the Petitioner with cruelty is not proved, but, since the allegation of the Petitioner that the Respondent deserted him without any reasonable cause is proved, the Petitioner is entitled for a decree as prayed for.

16. In the light of the above discussion and having regard to the overall facts and circumstances of the case, the Civil Miscellaneous Appeal is allowed setting aside the impugned order of the Court below. Consequently, the marriage of the

Petitioner and the Respondent is dissolved and a decree be passed to that effect. However, in the circumstances, there shall be no order as to costs.