
(1993) 09 AP CK 0014
In the Andhra Pradesh High Court
Case No : R.C. No. 123 of 1990

Swamidas Ravi Prasad Rao

APPELLANT

Vs

T. Kasturibai and Another

RESPONDENT

Date of Decision : 24-09-1993

Acts Referred:

Divorce Act, 1869 — Section 10

Citation : (1994) 1 ALT 81 : (1994) 2 DMC 480

Hon'ble Judges : A. Lakshmana Rao, Acting C.J.; P.L.N. Sarma, J; A. Gopal Rao, J

Bench : Full Bench

Advocate : K. Bathi Reddy, for the Appellant; K. Ramesh Choudary, for the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

P.L.N. Sarma, J.

This reference case is coming up before us u/s 17 of the Indian Divorce Act, 1869, (for short "The Act") for confirmation of the decree dissolving the marriage between the petitioner and the respondent passed by the Additional District Judge, Tirupathi.

1. Petitioner is the husband while the first respondent is the wife and second respondent is the alleged adulterer. The parties are referred to as such in this Judgment for convenience sake.

2. Husband filed O.P. No. 336 of 1988 on the file of Additional District Judge, Tirupathi u/s 10 of "The Act" seeking dissolution of the marriage solemnized on 25.5.1984 in the Church at Burripalem. O.P. 336 of 1988 was presented alleging that the husband and the wife are Christians by birth and their marriage was solemnized in the Church at Burripalem on 25.5.1984 and that the wife even from the date of the marriage developed dislike towards the husband and after the marriage she was brought to Tirupathi on 3.6.1984, but she returned to her parent's house on 30.6.1984. The allegation was that she deserted the husband

on the said date and returned to her parent's house at Burripalem. In spite of several requests, she did not join her husband and on 27.10.1984 the husband himself went to her parent's house and was able to persuade her to come to his house at Tirupathi. However, within a short period again on 30.12.1984 she deserted the husband and went back to her parent's house. Mediation took place between the parties on 15.5.1985, pursuant to which she came to Tirupathi, but she left Tirupathi again on 16.5.1985. Having lost his patience, the husband filed O.P. No. 334 of 1986 on the file of Principal District Judge's Court, Chittoor for restitution of conjugal rights, after which wife joined him. The said petition was dismissed. Again after a short interval on 14.10.1987, wife deserted the husband and went back to her parent's house. Though she was brought back again she deserted the husband on 17.2.1988. Husband came to know that the first respondent developed illicit intimacy with the second respondent even prior to their marriage and that he was not aware of the same at that time. It was specifically mentioned in the petition that the wife appeared to be pregnant even by the time of their marriage and therefore, she was not interested to stay with the husband. The desertion by the wife is only for the purpose of concealing her illicit movements and during the time she was at her parent's house she underwent an abortion. Thereafter, during her stay at her parent's house, she got second pregnancy through the second respondent. Delivery of child was also not communicated to the husband and he was not even allowed to look at the child. Alleging that the above events established beyond any doubt that the child was not born to the husband and born through second respondent, the petitioner filed the petition seeking dissolution of marriage.

3. Wife resisted the application by filing counter and she stated that though she is a Christian, originally she was from Harizan caste and the husband is from Padmassli caste and, therefore, she was not being treated properly. She denied that she underwent any abortion at any time and stated that she was pregnant only once when she was living with her husband and the child was born on 20.1.1986 and that she was driven away in the month of November, 1985 while she was in seventh month of pregnancy. Therefore, wife filed M.C. No. 6 of 1986 on the file of II Additional Munsif Magistrate's Court, Tenali and only after the filing of the said M.C., husband filed O.P. No. 334 of 1986 on the file of Principal District Judge's Court, Chittoor for restitution of conjugal rights and a compromise was effected in M.C. No. 6 of 1986 on 3.4.1987. Pursuant to the said compromise, both the M.C. No. 6 of 1986 as well as O.P. No. 334 of 1986 were dismissed, however, subsequently husband drove away the wife at attempted to kill the child. Therefore, wife had to return back to Burripalem at the end of the year 1987. Having regard to fact that she was not taken back by the husband, she filed M.C. No. 20 of 1988 on the file of III Additional Munsif Magistrate's Court, Tenali for maintenance and the same was dismissed for default. Again, another M.C. No. 40 of 1988 was filed for the same relief which was allowed granting a sum of Rs. 150/- and Rs. 75/- per month to the wife as well as child respectively towards their maintenance. She also mentioned that

nothing was stated in O.P. No. 334 of 1986 with regard to the child born on 20.1.1986 and that she never abandoned or deserted the husband and the husband himself abandoned her. She denied all the other allegations made by the husband regarding dislike developed by her against the husband or the desertion etc., and she stated that she is worshipping her husband. She has also specifically stated that the allegations of adultery and desertion are unfounded and the second respondent is a fictitious person created for the purpose of O.P.

4. Even though she filed counter as stated above, ultimately she was called absent and set ex parte on 20.2.1990 and the same, after hearing other side, was posted for orders. Then an application was filed to set aside the ex parte order, but without the support of an affidavit and the same was returned. Subsequently, the application was not pressed, but second application was filed without filing wife's affidavit. Having regard to the same, the application for setting aside the ex parte order was dismissed and the learned Judge proceeded ex parte.

5. The learned Judge, believing the evidence of P W. 1, the husband and Ex. A-2 the letter said to have been addressed by the wife to one Rani wherein she is alleged to have stated that the adulterer is her real husband etc., allowed the O.P. and granted decree dissolving the marriage solemnized between the petitioner and the first respondent on the ground of adultery. As stated above, the matter is coming up before us for confirmation of the decree for dissolution.

6. We have interviewed both the husband as well as the wife separately in the Chambers for the purpose of effecting reconciliation between them. While the wife stated that she is willing to stay with the husband, the husband categorically stated that he is not prepared to take her back. Therefore, we are proceedings to decide the matter.

7. In this reference case, Sri Bathireddy, learned Counsel appearing for the husband strenuously contended that since the wife remained ex parte on the basis of the evidence of P.W. 1 read with Ex. A-2, the learned Judge came to the proper conclusion holding that the first respondent was guilty of adultery since the date of solemnization of the marriage. Learned Counsel also contended that the course of events narrated above and mentioned in the evidence of P.W. 1 clearly proved the said allegation and, therefore, the decree dissolving the marriage granted by the learned Additional District Judge, Tirupathi, deserves to be confirmed.

8. On the other hand, the learned Counsel appearing for the wife contended that there is absolutely no evidence worth mentioning to establish that the wife is guilty of adultery as required u/s 10 of "The Act". The evidence of P.W. 1 is, to say the least, based on surmises and assumptions, and the same is not at all sufficient to establish the gravamen of the charge. Ex. A-2 letter was never written by the wife and it does not contain the signature of wife, neither it contains any date. It is not a complete letter at all. A portion of it was only filed

and it does not inspire any confidence and, therefore, ought not to have been relied upon by the learned Judge. Therefore, the order of the learned Judge is not sustainable and the decree for dissolution of the marriage should not be confirmed.

9. To appreciate the rival contentions, it is necessary to look into the evidence on record and the dates and events narrated which are practically admitted. Before doing so, it is necessary to refer to the principles of onus and standard of proof required in a case u/s 10 of "that Act" in respect of a charge of adultery.

10. What is stated in Section 14 of "The Act" when an application is presented u/s 10 for a decree of dissolution of marriage is that "in case the Court is satisfied on the evidence" that the case of the petitioner has been proved etc., the Court shall pronounce a decree declaring such marriage to be dissolved subject of course to limitations contained in Sections 16 and 17 of "The Act". Supreme Court had an occasion to consider the purport of the words "satisfied on the evidence" in *Earnest John White Vs. Mrs. Kathleen Olive White and Others*, . Learned Judges held that the language makes it plain that in respect of matrimonial offences the guilt must be proved beyond reasonable doubt and it is on that principle that the Courts in India would act and the reason for adopting this standard of proof is the grave consequence which follows a finding of guilt in matrimonial causes."

11. Keeping in mind the above said principle with regard to the standard of proof, let us consider the material placed before the Court below in this case by the husband. Husband as P.W. 1 spoke to the dates and events mentioned in the O.P. and stated that the wife was frequently leaving him as she developed illicit intimacy with the adulterer and further stated that he learnt that she had intimacy with the said adulterer even prior to their marriage. He also stated that a son was born to first respondent and that the said child was not born through him and born through second respondent, In the O.P., husband stated that he "came" to know that the wife developed illegal intimacy with the adulterer even prior to the marriage and suppressing the same, the marriage was celebrated and that the wife "appears" to be pregnant even by the time of the marriage and that during her stay in her parent's house, she "seems" to have an abortion. Therefore, the allegations made in the O.P. with regard to pregnancy and adultery charged against the wife are vague viz., "appears" to be pregnant, "seems" to be living in adultery and "came" to know about the fact that she was having illicit intimacy with the adulterer prior to the marriage. When we come to the evidence, it is also equally vague. While he stated in the evidence that he "learnt" that she was having illegal intimacy with the adulterer, he stated in the O.P. that the wife "seems" to be living in adultery. Having regard to the standard of proof required when a serious charge of adultery is made, as laid down by the Supreme Court in the decision referred to above (*supra*) to say the least, the allegations in the petition and the evidence let in support thereof as wholly insufficient and fall far below the standard of proof required. In our opinion, the

evidence will not satisfy the requirements of Sections 14 of "The Act" for granting a decree of dissolution of marriage on the ground of alleged adultery.

12. The only document which is relied upon by the husband is Ex. A-2, which is stated to be a letter written by the wife to one Rani from the matrimonial home. It is stated in the evidence that while the letter was being written, the sister of the husband-Kalpalatha Priyadarshini, saw the same and when the wife wanted to hide it, she snatched away the said letter from the wife and during that process, it was torn. Ex. A-2 does not bear any date, neither it contains any signature. Kalpalatha Priyadarshini who is alleged to have snatched the letter from the wife was not examined. It is not alleged that Kalpalatha Priyadarshini is not available to give evidence. Withholding best evidence viz., that of Kalpalatha Priyadarshini, with regard to proper custody of the letter, indicates that what is stated in the evidence of P.W. 1 regarding the obtaining of custody of the letter cannot be believed. We are not satisfied that a person writing letter from her matrimonial home to her alleged friend mentions in the very first line itself about the alleged adulterer and other aspects. The tenor and the contents of the letter do not inspire any confidence at all in us. Ex. A-2 is not the full letter and it was torn and to say the least, it is "maimed, mutilated and moth-eaten."

13. Having regard to what is stated above, both with regard to the allegations made in the petition as well as the evidence of P.W. 1, read with Ex. A-2, we are not satisfied that the husband was able to prove the charge of adultery levelled against the wife.

14. Further, a look at the dates and events themselves clearly indicate that the case of the husband in these proceedings is nothing but an afterthought and it is false. Marriage was celebrated on 25.5.1984 between the wife and the husband and the last date on which she is alleged to have deserted the husband is given as 16.11.1985. It is stated that the husband came to know that the wife was pregnant even before the marriage sometime in the month of May, 1986. On 18.6.1986 M.C. No. 6 of 1986 was filed on the file of IInd Additional Munsif Magistrate, Tenali by the wife and child u/s 125 Cr. P.C. for maintenance. Exactly about one month thereafter viz., on 18.7.1986, probably after the service of notice in M.C. No. 6 of 1986, husband filed O.P. No. 334 of 1986 on the file of Principal District Judge, Chittoor, for restitution of conjugal rights. It is significant to notice that in O.P. No. 334 of 1986 tiled on 18.7.1986 there is no allegation that the wife was guilty of adultery and that she had illicit intimacy with the adulterer even prior to the date of their marriage. Further, there is not even a whisper that the child which was born on 20.1.1986 was not born to him and what is more, O.P. itself was filed for restitution of conjugal rights. Thereafter, the matters were compromised. A compromise memo was filed before the IInd Additional Munsif Magistrate, Tenali, according to which husband agreed to take back the wife as well as the child. The same was recorded on 3.9.1987. Consequently, O.P. No. 334 of 1986 on the file of Principal District Judge, Chittoor was dismissed. They lived together subsequently even according to the husband.

Thereafter, as per the allegations in the petition, wife went to Burripalem and did not return to Tripathi. Wife filed M.C. No. 40 of 1988 which was dismissed for default and thereafter, M.C. No. 60 of 1988 was filed for maintenance u/s 125 Cr. P.C. The said M.C. was filed on 16.8.1988, while the present O.P. was filed on 6.10.1988 i.e., subsequent to the filing of M.C. No. 40 of 1988. Obviously coming to know of the filing of M.C. No. 40 of 1988 by the wife, husband initiated O.P., out of 336 of 1988. In the said O.P., out of which the present proceedings arise, all these allegations are made for the first time. If really the husband came to know that she was pregnant even at the time of marriage and that she was having illicit intimacy prior to the marriage with the adulterer, he would not have kept quiet till 6.10.1988 in that regard. Having regard to the fact that he came to know that she was pregnant and was having illicit intimacy with the adulterer in the month of May 1986, he would not have kept quiet without making any allegation in that regard in the counter in M.C. No. 6 of 1986 when maintenance is sought and would not have filed O.P. No. 334 of 1986 for restitution of conjugal rights. Since the child was born even on 20.1.1986, he would not have quite even after filing of M.C. No. 6 of 1986 without making any allegation in that regard. The compromise memo reveals that the husband has agreed to take back the wife and child. These circumstances clinchingly and categorically establish that the allegations made by the husband are absolutely unfounded and false and were made as an afterthought only for the purpose of this O.P.

15. For the foregoing reasons, we are of the opinion that the decree for dissolution of the marriage granted by the learned Additional District Judge, Tirupathi, is not at all sustainable and it is not in accordance with law and Court is not satisfied on the evidence on record that the allegations made by the husband are true. On the other hand, we are clearly of the opinion that the allegations made are false. Therefore, the judgment and decree for dissolution of the marriage on the ground of adultery granted by the Additional District Judge, Tirupathi is set aside, and O.P. No. 336 of 1988 is dismissed, but in the circumstances without costs.