

S. Srikanth Vs. B.A. Vani

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Court : Karnataka

Decided On : Oct-15-2014

Judge : K.L. Manjunath & a.V. Chandrashekara

Appeal No. : M.F.A.No.5813 of 2013 (FC)

Appellant : S. Srikanth

Respondent : B.A. Vani

Judgement :

(Prayer: This MFA Is Filed U/S 19(1) Of The Family Court, Against The Judgment And Decree Dated:08.04.2013 Passed In M.C.No.409/2011 On The File Of The Judge, Family Court, Mysore, Dismissing The Petition Filed U/S 13(1)(I-A) Of The Hindu Marriage Act, Dissolution Of Marriage.)

1. Present appeal is directed under Section 19 of Family Courts Act, 1984, challenging the order of dismissal of the petition filed under Section 13(1) (ia) of Hindu Marriage Act by the Family Court at Mysore in M.C.No.409/2011.

2. Respondent is the legally wedded wife of the petitioner and their marriage was solemnized on 29.11.2009 at Tumkur, as per Hindu customs. Petitioner had filed a petition before the Family Court at Mysore, seeking a decree of divorce on the ground of cruelty under Section 13(1)(i-a) of Hindu Marriage Act. The said petition has been dismissed after contest.

Several grounds have been urged in this appeal memo challenging the dismissal of the petition. Entire records of the Trial Court have been called for. Parties will be referred to as per their ranking given in the Trial Court.

3. The marriage of the parties solemnized on 29.11.2009 at Gayatri Kalyana Mantapa, Tumkur, was an arranged marriage and it was attended by the relatives and well-wishers of both the sides. Appellant is a practicing advocate at Mysore and the respondent was also practicing as an Advocate at Tumkur. After the marriage, respondent joined the appellant in the matrimonial house of the petitioner at Mysore. According to the petitioner, the respondent started pressurizing him to establish a separate house and demanded him to admit his parents to old age home. On 08.01.2010 the respondent's parents along with their son and some of his colleagues visited the petitioner's house and manhandled him and his parents and even went to the extent of filing a false complaint against the petitioner before the police. The respondent is stated to have lived in the matrimonial home for only twelve days and during this period his parents were forced to go the Police Station. She is stated to have made false, frivolous and reckless allegation stating that the petitioner had demanded dowry from her family members. Respondent is stated to have treated the petitioner as well as his parents with cruelty.

4. Respondent chose to appear before the Trial Court and filed a detailed statement of objections denying all the material averments except admitting the marriage solemnized between her and the petitioner. She has called upon the petitioner to prove the contents of the petition strictly.

5. It is her case that during her short stay in the matrimonial home of the petitioner between 30.11.2009 to 12.12.2009 she was harassed by the petitioner in many ways. It is alleged that he had demanded her to bring a sum of Rs.5 lakhs from her parents. Petitioner's mother is stated to have opposed her practicing as an Advocate though the petitioner and respondent had agreed to continue the profession even after marriage, at Mysore.

6. On 02.01.2010 she had come to Tumkur to attend some examination and after the same, her father left her in the matrimonial house at Mysore on 06.01.2010.

On that day, petitioner and his family members ill-treated her and on the night of 07.01.2010, petitioner and his mother assaulted her physically and did not give her food on that night. Therefore, she had to intimate her parents over phone immediately and thereafter her parents and her brother reached Mysore at about 3.45 a.m. on the early morning of 08.01.2010. The matter was orally reported to the jurisdictional Saraswathipuram Police Station. A case was registered in NCR No.6/2010 and on the advise of the parents, petitioner agreed not to harass her in future. She came back to Tumkur and waited for three months and there was no communication from the petitioner. Thereafterwards, respondent was shocked to receive a copy of the petition filed before the Family Court. Though she is willing to join the petitioner, nobody is interested in taking her back. The present petition is stated to have been filed with an oblique motive to get a divorce. In spite of all these things, the respondent is ready to join and lead a happy matrimonial life with the petitioner.

7. It is her clear case that she has no ill-will whatsoever against her husband in spite of ill- treatment meted out to her. It is her case that she has already completed 36 years and petitioner has completed 42 years and that it would not be advisable to live apart by having a decree of divorce. Hence, she has prayed to dismiss the appeal.

8. Petitioner herself has been examined as PW1. Two witnesses viz., E.Raghavendra and U.S.Vijay have been examined as PWs2. and 3. Respondent is examined as RW1 and three witnesses have been examined on her behalf. After analyzing the oral and documentary evidence the learned Judge has chosen to dismiss the petition by framing following point for consideration:

"Whether the petitioner is entitled for the dissolution of marriage on the ground of cruelty?"

9. Several grounds have been urged in the appeal memo challenging the dismissal of the petition filed before the Trial Court.

10. We have heard the learned counsel appearing for the appellant and the respondent in person at length. After going through the records, following points

arise for our consideration:

1. Whether the Trial Court is justified in holding that the petitioner has failed to prove the allegation of cruelty in order to obtain decree of divorce?

2. Whether any interference is called for by this Court and if so, to what extent?

11. Petitioner has examined himself as PW1. On his behalf, two witnesses have been examined to impress upon the Court that at about 10.00 a.m. on 08.01.2010, police came to the office of the petitioner and took the petitioner and his parents telling him that they were wanted in a case filed by the respondent for offence punishable under Section 498-A of IPC.

12. E.Raghavendra and U.S.Vijay examined as PWs.2 and 3 are stated to be the clients of the petitioner and that they were present at the time when police of Sarswathipuram Police Station came to the office of the petitioner at about 10.00 a.m. on 08.01.2010 and took him and his parents to the police station.

13. Ex.P2 is stated to be the complaint lodged by the respondent-wife against the petitioner and his family members on 08.01.2010. The background for filing this report vide Ex.P2 by the respondent will have to be looked into.

14. Marriage of the petitioner and the respondent was solemnized on 29.11.2009 in Kalyana Mantap at Tumkur. Both the petitioner and the respondent are practicing the Advocates. Petitioner has been practicing as an Advocate at Mysore and respondent was practicing as an Advocate at Tumkur at that point of time. The respondent lived in the house of the petitioner for only twelve days from the date of marriage and according to the petitioner, she lived cordially with him and his parents. It is his case that she insisted him to establish a separate house so that both of them could live independently.

15. The case of the petitioner is that he was not agreeable to the said demand, since his parents were aged and suffering from several ailments. According to him, it was his pious duty to look after them in their evening days of their life. According to him, the respondent left the matrimonial house on 12.12.2009 on her own and stated that she would return only if a separate residence was made and their

parents were kept away from them. After she left the house, the petitioner is stated to have visited the house of his in-laws thrice at Tumkur, in order to persuade her to come back to the matrimonial home. It is his assertion that the respondent never cared for his advice and did not return to Mysore.

16. It is stated by the petitioner that on 04.01.2010 when he contacted her over phone, she had assured to come back on 06.01.2010 to join him at the matrimonial home. Accordingly, she returned on 06.01.2010 and on the very next day, she started demanding him to establish a separate house, failing which, she would file a police complaint against him and his parents. It is his case that he tried his best to pacify her, but the respondent was so rude that she locked her room from inside and threatened to commit suicide. Thereafter, she contacted her parents and her brother over phone and at about 4.30 a.m. on the early morning of 08.01.2010, the brother and parents of the respondent came from Tumkur, and took her away with her belongings. She is stated to have taken even the mobile phone of the petitioner and cash of Rs.5,000/-.

17. It is his further case that at about 10.00 a.m. on 08.01.2010 when he was working in his office, the police of Saraswathipuram Police Station came there and took him and his parents stating that his wife had lodged a complaint against him. According to him, the said complaint was baseless. Whether Ex.P2 lodged by the respondent is really a complaint will have to be seen. Police have not registered any case on the basis of this report dated 08.01.2010.

18. On going through Ex.P2, it appears that the petitioner himself had abused the respondent by making reference to his sister-in-law. It is further mentioned that on 07.01.2010, the petitioner picked up a quarrel with him demanding her not to continue her practice and her in-laws also insisted her not to do so. The prayer sought for in Ex.P2 by the respondent-wife is to call her husband and in-laws and to suitably advise them not to do so and to give her protection. On the basis of the same, NCR No.6/2010 was registered. If the police had really treated this as a complaint of harassment to be punishable under Section 498-A of IPC, they would not have registered NCR; they would have registered a regular criminal case.

19. The intention of making a report to the police is not to harass them by filing a criminal case, but to see that no uncomfortable atmosphere was created in the matrimonial home. In response to the enquiry conducted by the police on the basis of NCR No.6/2010, both the parties had given their statement before the Police. Ex.P5 is the statement given by the petitioner and Ex.P6 is the statement given by the respondent-wife to the police on 08.01.2010.

20. The gist of the statement given by the petitioner Srikanth to the police on 08.01.2010 as evidenced in Ex.P5 is that there was a demand by his wife to establish a separate house and that he had not acceded to her demand. He had assured the police that his wife would go back to Tumkur for 15 days and then he would bring her back.

21. The gist of Ex.P6 the statement of respondent- wife given to the police is that she was going to back to Tumkur, along with her parents and that after 15 days her husband would come to Tumkur to take her back and look after her with all love and affection.

22. Unfortunately, some differences had cropped up between the husband and wife on the night of 07.01.2010 and as result of the same, she had approached the police for protection and not to file any criminal case against him or his parents. The reasonable inference that could be drawn from a conjoint study of Exs.P5 and P6 is that she wanted the matrimonial tie to continue and that she wanted to come back.

23. On 27.01.2010 respondent had written a letter from Tumkur to her husband and had even reminded him of his birthday on 1st February. The gist of the letter written by her as evidenced in Ex.P7 dated 27.01.2010 is that she did not like the authoritative nature of her mother-in-law i.e., the mother of the petitioner. This would also disclose that petitioner had suppressed some material fact regarding his character.

24. What is highlighted by her is that, it is but natural for a man to commit some mistakes and that the said mistakes must be rectified at the earliest. She was worried about the bad habit to which the petitioner was addicted and she was

proud of her husband being an Advocate. She wanted her husband to give up the bad habit and lead a happy married life. If she had really made up her mind to sever her marital tie, a letter in the nature of Ex.P7 would not have emanated from her, that too within a span of 15 days from the alleged differences. On 24.04.2010 she approached the Saraswathipuram Police Station on the basis of NCR No.6/2010 dated 08.01.2010. She had referred to the undertaking given by her husband to take her back within 15 days from Tumkur to Mysore. Since he did not keep up his words, she wanted the police to intervene and persuade him so that he could take her back by creating a good atmosphere. This would also fortify her intention to lead her marital life with the petitioner. Against this, an endorsement was given to the petitioner stating that the matter was civil in nature and that they must approach the Court. It was but natural that the petitioner was torn between his wife and his parents.

25. What is argued before this Court is that as a result of the complaint lodged by the respondent, the petitioner and his parents had to approach the Sessions Court seeking anticipatory bail since there was an imminent threat of their arrest by the police. It is in this regard, the petitioner has relied upon Ex.P13 an order passed by the learned II Addl. Sessions Judge, Mysore, in CrI.Misc.No.1500/2010 on 23.08.2010 granting anticipatory bail to the petitioner and his parents. It is true that even in the absence of registration of a criminal case, anticipatory bail can be granted under Section 438 Cr.P.C. Whether the apprehension of the petitioner and his parents were well-founded to seek such anticipatory bail is the question?

26. A specific reference is already made to Ex.P2 alleged complaint or report lodged by the respondent to the Inspector of Police, Saraswathipuram Police on the morning of 08.01.2010. By no stretch of imagination it could be considered as one to rope in the petitioner and his parents in a criminal case and to prejudice them. One cannot forget that some unfortunate incident took place in the house of the petitioner within a few days of her marriage. A married lady requires some reasonable time so that she can adjust to the new atmosphere in the matrimonial house. Suffice to state that the petitioner did not give her sufficient time so that she could adjust to the new environment. On the other hand, he did not go to Tumkur to bring her back though he had undertaken to get her back within 15 days. On the

other hand, he went to the extent of seeking anticipatory bail in the month of August 2010 on a report lodged on 08.01.2010 by the respondent.

27. He has placed reliance upon another report submitted vide Ex.P8 on 24.04.2010. She wanted the police to persuade her husband to take her back to the matrimonial home. If the contents of Ex.P8 are read as a whole, it is evident that it is not a complaint of another allegation made against her husband. Therefore, even if the petitioner and his parents have obtained anticipatory bail, it can only be said that it was obtained on an ill-founded apprehension.

28. What is argued before this Court is that cases came to be filed against the petitioner and his family members in the High Court by the respondent and hence, Ex.P15 is relied upon.

29. Ex.P15 is the certified copy of the writ petition filed by the respondent Smt.B.A.Vani, against her husband in W.P.No.22848/2010. The prayer sought for in the said writ petition is to issue a writ in the nature of prohibition, forbidding the proceedings initiated by her husband in case bearing M.C.No.235/2010 on the file of Family Court at Mysore, even before one year of her marriage. Of course, the petitioner had chosen to file a petition under Section 13(1)(ia) of Hindu Marriage Act, seeking divorce on the ground of cruelty even before the expiry of mandatory period of one year. He had chosen to file within a period of six months and 20 days of his marriage with the respondent. This also shows that the petitioner was more eager to have a divorce than sustaining the marriage.

30. What is argued before this Court by the learned Counsel for the petitioner is about the writ petition filed in W.P.No.37514/2010 (GM-FC) before this Court. The certified copy of the writ petition is marked as Ex.P17. The prayer sought for in the said writ petition is to prohibit further proceedings of M.C.No.235/2010 and for a direction to her husband to take her and provide her, harassment free atmosphere. All these would go to show that the respondent-wife was more interested in joining him than deserting him.

31. The innumerable SMSs sent by her through her mobile to her husband's mobile are forthcoming in Ex.R3. The innumerable SMSs sent through her mobile

to her husband's mobile would clearly indicate that she was more possessive towards her husband and at any cost she wanted the marriage to remain. Instead of understanding the real intention of the respondent, the petitioner chose to file a petition for divorce even before the expiry of mandatory period of one year.

32. This Court in the case of Srikanth Vs. Smt.P.B.Nandhini reported in AIR 2010 KAR 1 (DB), has dealt at length about the allegation of cruelty in matrimonial offences. It is specifically held by the Division Bench in Srikanth Vs. Nandhini's case that if marriages are dissolved on trivial issues, no marriage would be saved. It is further held that there has been a recent trend to seek divorce on flimsy grounds. Referring to various decisions of the Hon'ble Apex Court, more particularly, the cases of V.Bhagat Vs. D.

Bhagat reported in AIR 1994 SC 710 and A.Jayachandra Vs. Aneel Kaur, reported in AIR 2005 SC 534, Naveen Kohli Vs. Neelu Kohli reported in AIR 2006 SC 1675, it is reiterated that public interest demands not only that the married status should as far as possible, as long as possible and whenever possible, be maintained, but where a marriage has been wrecked beyond the hope of salvage, public interest lies in the recognition of that fact.

33. It is not as though the parties lived as husband and wife for few years and that they have not been living separately for quite a long time. If the parties have been living separately for several years and if there is no possibility of rapprochement and if the marriage has irretrievably virtually broken down, that can only be taken as an additional ground, provided other main grounds are made out.

34. Learned Counsel for the appellant has relied upon the decision in the case of K.Srinivas Rao Vs. D.A.Deepa reported in AIR 20213 SC 2176. We have perused the said decision. The ratio of the said decision is that all honest efforts must be made when husband and wife approach a criminal Court with the allegation of dowry demand or harassment. As per the facts of the said case, the marriage between the parties had broken down irretrievably and they had been living separately for several years. False cases had been foisted by Deepa against her husband. Taking all these into consideration and invoking Article 142 of the Constitution of India, the marriage came to be dissolved. While granting the

decree of divorce, a specific direction has been given to all the Criminal Courts dealing with matrimonial offences under Section 498-A of IPC that honest efforts should be made to send the parties for mediation and in this regard, pre-litigation mediation clinics will have to be established.

Therefore, the said decision so cited on behalf of the appellant is not of any assistance.

35. After re-assessment of the entire oral and documentary evidence, we are of the considered opinion that the Trial Court has adopted right approach to the real state of affairs keeping in mind the law laid down by the Hon'ble Supreme Court in regard to the divorce to be granted on the ground of cruelty. We are also of the firm opinion that the possessiveness that the respondent has towards the petitioner has led to some differences between the two and that has been blown out of proportion. In fact, there was no opportunity for her to be in the matrimonial house for few months. Before she could settle in the matrimonial house, unfortunate incident took place between the two and that cannot be considered as a severe cause. Both the petitioner and the respondent are well educated people being practitioners of law. Respondent has not made any serious allegation against the petitioner imputing his chastity and the petitioner has also not made any serious allegation against the respondent touching her chastity.

36. The petitioner should have waited for sometime so that the differences could have been ironed out. Instead of doing so, he chose to approach the Court seeking the relief of divorce within a short period. Hence, we are of the considered opinion that the Trial Court is justified in dismissing the petition. As observed in Srikanth Vs. Nandhini's case, even now we hope that the appellant would appreciate our concern to save the marriage and would live as good husband and wife. Hence, point No.1 is answered in the affirmative. Point No.2:

In view of our finding on point No.1, the appeal is dismissed.

ORDER

The appeal filed under Section 19(1) of the Family Courts Act, is dismissed, by upholding the judgment and decree dated 08.04.2013 passed in M.C.No.409/2011 on the file of the Judge, Family Court, Mysore.

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