

Manjunath Vs. Smt P Nethravathi

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Court : Karnataka

Decided On : Jul-09-2014

Judge : K.L.Manjunath and Ravi Malimath

Appeal No. : MFA 4034/2012

Appellant : Manjunath

Respondent : Smt P Nethravathi

Judgement :

IN THE HIGH COURT OF KARNATAKA AT BANGALORE DATED THIS THE 9TH DAY OF JULY 2014 PRESENT THE HONBLE MR.JUSTICE K.L.MANJUNATH AND THE HONBLE MR.JUSTICE RAVI MALIMATH MISCELLANEOUS FIRST APPEAL NO.4034/2012 (MC) BETWEEN: Manjunath S/o Late Bhuteshappa Aged about 33 years Sub-Inspector of Police R/at Bhadravathi Police Station Shimoga - 577 301 (By Sri. Bipin Hegde, Advocate) AND: Smt.P.Nethravathi W/o B.Manjunath Aged about 32 years Sub-Inspector of Police Backside of Health Quarters T.B.Circle, Honnali Taluk Davanagere District - 575 305 (By Sri.B.V.Gangi Reddy, Advocate) APPELLANT RESPONDENT2This MFA is filed under Section 19(1) of the Trial court Act, R/S Sec.28 of Hindu Marriage Act, against the judgment and decree dated 10.10.2011 passed in M.C.No.5/2009 on the file of the Senior Civil Judge, Harihar, dismissing the petition filed under Section 13(1)(ia) and (1) (ib) of Hindu Marriage Act, for dissolution of marriage. This MFA coming on for this day, K.L.Manjunath J., delivered the following:-

JUDGMENT

The appellant is questioning the legality and correctness of the judgment and decree passed by the Senior Civil Judge, Harihar Taluk dated 10.10.2011 in M.C.No.5/2009. Wherein the petition filed by the appellant for grant of decree of divorce on the ground of cruelty and desertion under the Hindu Marriage Act, 1955 [for short, the Act]. is dismissed by the court below.

2. The appellant is the husband of the respondent. Their marriage was solemnized on 30.11.2006 at Herikallmath Samudaya Bhavan, Honnali Taluk, Davanagere District. At the time of marriage, the respondent-wife was working as Sub-inspector of Excise Department, the appellant- 3 husband was on training as a probationary police sub- inspector. In the circumstance, even after the marriage, the respondent-wife continued to reside at Honnali along with her mother. Later on, the appellant-husband was posted to Bhadravathi as sub-inspector of police. Then he requested the respondent to join him at Bhadravathi. The respondent did not agree to join the appellant at Bhadravathi. However, the appellant used to travel from Bhadravathi to Honnali as and when time was permitting him.

3. In November 2007, the respondent gave birth to a male child. It is the case of the appellant that after the birth of the child, the respondent started ill-treating the appellant and abusing him in filthy language, and also refused to share bed with him and his mother was also not treating properly whenever he visited the house at Honnali. It is also the case of the appellant that a panchayath was convened to persuade the respondent to join the appellant 4 at Bhadravathi. Since she refused to join him at Bhadravathi, he allowed the respondent to reside at Honnali. Thereafter, also she started abusing him in the presence of friends, family members and relatives. According to him, after the marriage, the respondent has visited his native village only once, which is in Hosdurga taluk of Chitradurga district and she has not even visited his house for festivals, on the premises it is a remote village without any amenities.

4. It is further averred by the appellant that the respondent again started to ill-treat him. Subsequently, another panchayath was convened and in the panchayath, it was agreed that the respondent shall treat the appellant with all love and affection.

Even then, the respondent continued her old habits.

5. When the matter stood like this, the respondent-wife filed a petition against the appellant under the provisions of the Protection of Women from Domestic Violence Act, 2005 5 [for short, DV Act]., stating that she has not been provided with shelter, food and cloth by the appellant-husband. The said complaint was lodged not only against the appellant but also against his aged mother and younger brother, who are residing in a remote village in Hosdurga taluk, which is far off from Honnali. The court also advised the respondent to withdraw the false complaint lodged against the appellant and live with him peacefully. The advice given to her by the court was not heeded to by the respondent. In the meanwhile she gave birth to a daughter. When he visited the hospital to see the child, the respondent lodged a false complaint against the appellant before the Superintendent of Police, Shimoga. In the circumstance, appellant filed a petition for grant of a decree of divorce, on the ground of mental cruelty and desertion.

6. The respondent-wife contested the matter. She admitted the marriage solemnized between her and the appellant and giving birth to a son and a daughter. 6 According to her, on account of the hard work of her mother, the respondent and her sisters and brothers were given education and she secured a job as sub-inspector in excise department and she continued to reside at Honnali. She also admits that after the marriage, her husband insisted her to reside with him at Bhadravathi, where he was working. She did not join the appellant, because she was working at Honnali. The respondent made allegations against the appellant stating that when the appellant was working as PSI at Bhadravathi, he compelled her to pay money and she used to give Rs.5,000/- per month out of her salary. Being not satisfied with the same, he used to tease her stating that if he had married some other lady, he would have got Rs.20,00,000/- as dowry and a car. It is her case that in order to satisfy the demands of the appellant, she borrowed a sum of Rs.75,000/- from State Bank of Mysore, Davanagere and the same was discharged by her on monthly installments. 7 7. It was also alleged by the respondent that when she was in the family way, the appellant scolded her in filthy language. After she gave birth to the second child, the appellant demanded her to stay with him at Bhadravathi and thereafter also he insisted that she should

stay in Bhadravathi where her mother had constructed a house by borrowing loan from Vijaya Bank. According to respondent, when she gave birth to first child, the appellant availed paternity leave and instead of using the same to take care of her, he visited his parents house in Hosdurga taluk. He also refused to bring his mother to look after the small baby, and later on she shifted his residence at Bhadravathi. Then he demanded Rs.30,000/- towards naming ceremony. When she refused, he threatened her that he would file a divorce petition and also assaulted her. It is her further case that the respondent demanded Rs.5,00,000/- in order to secure a teachers job to his sister. When she refused to give money, he has filed the petition for divorce. In the 8 circumstances, she requested the court to dismiss this petition.

8. To prove the respective contentions, on behalf of the petitioner, two witnesses were examined. Out of them, PW1 is the appellant. PW2 is Mr. Parameshwarappa. K, who is none other than the father of the respondent. He relied upon Ex.P-1 to P-20. On behalf of the respondent, the respondent got herself examined as DW1 and she relied upon Exhibits R-1 to R-3.

9. The trial court formulated the following points for consideration:

1. Whether the petitioner proves that the respondent has treated him with cruelty
2. Whether the petitioner proves that the respondent for continuous period of not less than two years the presentation of petition?. immediately preceding has deserted him
3. What order?.
9 10. After considering the evidence, the trial court held point No.1 in negative. The learned counsel for the petitioner-husband did not press the ground of desertion. Accordingly, the petition filed for grant of divorce on the ground of cruelty came to be dismissed. Challenging the legality and correctness of the same, the present appeal is filed.

11. We have heard the learned counsel for the parties.

12. After hearing the parties at length, considering the relationship and background of the parties, as both of them are highly placed in the society and having two children, an attempt was made by this court to settle the dispute so as to restore their family relationship. The appellant- husband is willing to live with the

respondent-wife and children, provided the respondent agrees to withdraw the petition filed by her challenging the B report submitted by the police on the complaint lodged by her under Section 498A IPC read with Sections 3 and 4 of the Dowry 10 Prohibition Act, 1961 [for short DP Act]. during the pendency of the divorce petition. The aforesaid complaint was lodged by the wife after the husband filed the petition for grant of a decree of divorce and that too after she was served with notice from the trial court and engaging of a lawyer to defend her case. The respondent submitted that she has no objection to live with the appellant-husband and children, but she refused to withdraw the petition filed by her challenging the B report filed by the police. We have also sincerely advised the respondent that when she is willing to live with the appellant-husband, in all fairness, she is required to withdraw the petition filed by her challenging the B report filed by the police. Since, she did not agree and on account of her adamant attitude, all efforts made by this court to restore the relationship between the parties in order to put an end to litigations, ended in vain. 11 13. After reconciliation was failed, we again heard the counsel for the parties on merits.

14. Learned counsel for the appellant submits that the trial court has committed an error in not granting a decree of divorce in favour of the appellant on the ground of mental cruelty. The trial court did not consider the instances, illustrations and sequences of events led to filing of the petition seeking for a decree of divorce. According to him, if the court below had considered the evidence let in by the parties, in all fairness, the trial court was required to accept the contentions of the appellant and granted a decree of divorce. It is further contended by him that the appellant has proved the mental cruelty inflicted on him by the respondent by narrating the instances which can be considered as mental cruelty considering the background of the parties. According to him, the appellant is working as PSI and the respondent is working as an excise sub- inspector. Before the marriage, she was residing at 12 Honnali and she continued to reside there until she shifted her residence to Bhadravathi, after constructing a house of her own.

15. According to the learned counsel for the appellant, the following instances are to be considered as mental cruelty inflicted on the appellant by the respondent: Whenever, he visited Honnali, where the respondent was working, she has

humiliated him in the presence of friends and relatives. She has not treated his mother when she visited Honnali. Though the appellant was working as PSI at Bhadravathi, which is far away from Honnali, she lodged a complaint under the provisions of DP Act stating that she was not providing food, cloth and shelter by the appellant. According to him, when the respondent is living separately at Honnali and when her salary is more than that of the appellant, she could not have filed a case stating that she has not been provided with cloth, shelter and food. It is also the case of the appellant that in the complaint lodged 13 under the DP Act, the respondent has also arraigned his old mother and younger brother, who are residing in a remote village in Hosdurga taluk, 150 kms away from her workplace, who are no way concerned with the family affairs of the parties. When the appellant was attending court at Harihar, she also lodged a false complaint against the appellant. Being not satisfied with the mental torture gave to the appellants, four months after the filing of divorce petition, she lodged a police complaint alleging offence under Section 498A IPC read with Sections 3 and 4 of the DP Act against the appellant and that she also went to press and media in the matter, which was widely published in all newspapers. The trauma underwent by him cannot be described in words, since he was discharging the duties of PSI in the same place. When his name was published in all newspapers, it was difficult for him to discharge his duties as PSI, that too when false complaint was filed for the offences punishable under Section 498A IPC and Sections 3 and 4 of DP Act. The 14 trial court without considering all these materials, has dismissed the divorce petition, holding that the appellant has failed to prove the mental cruelty inflicted on him.

16. The learned counsel for the respondent has made an attempt to support the judgment of the trial court. According to him, the appellant has not been inflicted with any mental cruelty and that the case of the appellant has to be dismissed.

17. In this background, the only point that arises for consideration by this court in this appeal is as under: Whether the appellant has proved that the respondent has treated him with mental cruelty and that any reasonable man of prudence with his social background cannot be expected to live with the respondent?.

18. In order to appreciate the contentions of both parties, we have to consider how the case of mental cruelty can be established by a party who approaches the court. Under the Act, the term mental cruelty or physical cruelty has 15 not been defined. However, broad guidelines are enunciated by the Honble Supreme Court as to how to consider the issue of mental cruelty?.

19. In VINIT SAXENA vs PANKAJ PANDIT [(2006) 3 SCC778, the Honble Supreme Court held as under:

31. It is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such willful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case. In the same judgment, the Honble Supreme in para-35 has held as under:

35. Each case depends on its own facts and must be judged on these facts. The concept of cruelty has varied from time to time, from place to place and from individual to individual in its application according to social status of the persons involved and their economic conditions 16 from the whole to be and other matters. The question determined the matrimonial relations between the parties. In this connection, the culture, temperament and status in life and many other things are the factors which have to be considered facts and is 20. In VISHWANATH AGARWAL S/O SITARAM AGARWAL vs SARALA VISHWANATH AGARVAL [(2012) 7 SCC288, the Honble Supreme Court has dealt with the concept of cruelty, as under: has cruelty expression 22. The an inseparable nexus with human conduct or human behavior. It is always dependent upon the social strata or the milieu to which the parties belong, their ways or life, relationship, temperaments and emotions that have been conditioned by their social status.

21. In the light of the judgments of the Honble Apex Court supra, we have to consider the evidence let in by the parties to hold as to whether the appellant

proves mental cruelty allegedly inflicted on him by the respondent?.

22. It has come in the evidence that on 11-6-2008 under Exp13, a complaint was lodged under Section 498A IPC read with the provisions of DV Act. Exp3 is prepared by the Protection Officer/Child Development Program Officer, CDPO Office, Honnali, Davangere District. According to this complaint, when the complaint was lodged, the respondent was pregnant of three months and by then she had already delivered her first son by name Kruthik. Acts of domestic violence as per the said complaint are that the appellant was trying to threaten her and she was driven out of the home without providing food, cloth, shelter and assaulted her and demanded dowry. It is also the case of the respondent that the appellant has threatened her to give divorce and therefore apprehending danger to her, she lodged the said complaint.

23. We are unable to understand the logic behind the complaint lodged by the respondent, because, her salary was more than the salary of the appellant. She was also working as sub-inspector of excise and was residing separately at Honnali. The appellant was working at 18 Bhadravathi as PSI. The aforesaid complaint was not only lodged against the appellant, but also against his aged mother and younger brother, who are residing at Garag, a remote village in Hosdurga taluk. When the respondent is residing separately and having her own income, we are unable to understand how the respondent can lodge a complaint against the appellant on the ground that she has been driven out of the house without providing food, shelter and cloth. Being not satisfied that, she had lodged a complaint in the month of October 2009 under Section 498A IPC after the appellant filed the divorce petition before the trial court.

24. We have also seen the records. It is seen that by the time the respondent lodged complaint alleging offence under Section 498A IPC, she has received notice from the court below and also engaged a lawyer on 4-7-2009 i.e. three months thereafter, she lodged the complaint. Exp7 to 21 disclose that after filing a complaint alleging offences 19 under Section 498A IPC, she went before the press and media and then the appellant was working as PSI in the same place. When she had already received the notice from the divorce court and having engaged

the services of a lawyer, we are unable to understand how the appellant could have demanded dowry from her. In addition to that, after filing of the B report by the police, she has also challenged the B report.

25. The respondent on her own produced ExR2 and 3 - a compliant lodged by her on 19-6-2010, when the matter was pending before the trial court, before the Harihar town police station alleging offences punishable under Sections 504 and 506 IPC. The said complaint was also not registered and a B report is filed.

26. In spite of such humiliation of the appellant and his aged mother and younger brother, the appellant is still willing to take her back with their children. The only condition put forth by the appellant to restore the marital relationship is that the respondent shall withdraw the petition filed by her challenging the B report filed by the police on the complaint filed by the respondent against the appellant alleging offence under Section 498A IPC. The respondent, who appeared before this court, in all fairness, should have agreed to withdraw the said petition, but she contended that she has no objection to live with the appellant, but refused to withdraw the petition. In other words, in one breath she is willing to live with the appellant and in the other breath she is interested to prosecute the appellant under Section 498A IPC to see that he is convicted by the court. The very conduct of the respondent shows that she is hell bent upon to harass the appellant in all possible manner not only prior to filing of the divorce petition but she continued her efforts even subsequently. Though the appellant has deposed that he was humiliated in the presence of his friends, relatives and that he was not allowed to see the child is disbelieved by this court, this court cannot brush aside the documentary evidence produced by the parties about the filing of cases by the respondent against the appellant one after the other. In the circumstances, we are of the view that the trial court has failed to appreciate the evidence let in by the appellant in proper perspective and also failed to consider various decisions of the Honble Supreme Court for grant of a decree of divorce on the ground of mental cruelty. As stated supra, both are well educated, highly placed in the society and the society expects the appellant to discharge his duties in a fair manner as PSI. On account of false complaints lodged by the respondent under Section 498A IPC against the appellant, who is discharging his duties as PSI in the same police station, it would

necessarily cause mental torture to the appellant and when the same is also published in the media, certainly would have a far reaching effect on the appellant. Therefore the finding of the trial court on the question of mental cruelty has to be reversed by this court. 22 27. In the result, the appeal is allowed. The judgment and decree passed by the Senior Civil Judge, Harihar in MC No 5 of 2009 dated 10-10-2011 are hereby set aside. The marriage solemnized between appellant - husband and respondent-wife on 30-11-2006 at Herikallmath Samudaya Bhavan, Honnalli Taluk, Davanagere District is hereby dissolved. Parties to bear their costs. Sd/- JUDGE Sd/- JUDGE Bsv/*pjk

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