

**Shivakumar Vs. Premavathi**

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**SooperKanoon Citation :** [sooperkanoon.com/386533](http://sooperkanoon.com/386533)

**Court :** Karnataka

**Decided On :** Nov-20-2003

**Reported in :** AIR2004Kant146; 2004(1)KarLJ194

**Judge :** S.R. Nayak and ;Ram Mohan Reddy, JJ.

**Acts :** [Hindu Marriage Act, 1955](#) - Sections 13(1)

**Appeal No. :** Miscellaneous First Appeal No. 2384 of 2003

**Appellant :** Shivakumar

**Respondent :** Premavathi

**Advocate for Def. :** M.S. Prakash, Adv.

**Advocate for Pet/Ap. :** B.K. Manjunath, ;S.C. Vijayakumar, ;Harsha R. Londhe and ;S.N. Sneha, Advs.

**Disposition :** Appeal dismissed

**Judgement :**

**Ram Mohan Reddy, J.**

1. The appellant-husband, unsuccessful in securing order for dissolution of his marriage with the respondent has preferred this appeal under Section 28 of the [Hindu Marriage Act, 1955](#) (for short, 'the Act') calling in question the order dated

28-2-2003 passed in M.C. No. 1 of 1995 on the file of the Civil Judge (Senior Division), Judicial Magistrate First Class, Bhadravathi.

2. Shivakumar the appellant and Premavathi the respondent were married sometime in the year 1981 at Yarehalli Village according to Hindu rites and customs. One son is born out of the wedlock. The appellant alleged that the respondent had developed an illicit intimacy with one Thimme Gowda, on the say of the persons in the locality. The appellant having curtailed the movements of the respondent, she left the matrimonial home and lodged a false complaint with the police, who after investigation filed a 'B' report. The challenge to the 'B' report resulted in the Magistrate taking cognizance of the case under Section 307 of the IPC read with Section 4 of the Dowry Prohibition Act and on trial ended in an acquittal on 5-12-1988. The respondent tiled an application under Section 125 of the Cr. P.C. in which the appellant gave his consent to pay a sum of Rs. 300/- towards monthly maintenance of the appellant and child Mallikarjuna. The appellant also alleged that the respondent was living in the house of one G.N. Ganganna as his kept mistress. Since 1983 the respondent was not willing to lead a married life with the appellant, the petitioner M.C. No. 1 of 1993 under Section 13 of the Act for dissolution of marriage by a decree of divorce was sought for by the appellant.

3. The respondent-wife, though served with notice did not appear before Court or make arrangements for being represented and therefore the Principal Civil Judge, and Chief Judicial Magistrate, Shimoga placed the respondent ex pane and allowed the petition granting the decree of divorce by order dated 21-2-1994. Being aggrieved by the said order, the respondent filed M.F.A. No. 2510 of 1994 before this Court and a Co-ordinate Bench of this Court, allowed the appeal set aside the order dated 21-2-1994 by a judgment dated 2-12-1994, and remitted the matter to the Civil Judge, Bhadravathi for fresh disposal in accordance with law.

4. The appellant after the completion of the period for filing of an appeal got married for the second time with one Neelamma and out of the said wedlock has two children. The respondent entered appearance in the petition before the Court below and filed her written statement denying all the allegations set out in the

petition for divorce while admitting the marriage with the appellant. This respondent denied any illicit relationship with either Thimme Gowda or with G.N. Ganganna. The respondent denied having refused to live with the appellant on the contrary contended that she was thrown out of the matrimonial home while she was 11 1/2 months pregnant and thereafter the appellant deserted the respondent and also failed to maintain her. Left with no other alternative the respondent petitioned the Court seeking maintenance.

5. In the premise of the pleading of the parties, the Court below framed the following issues:

1. Whether the petitioner proves that after solemnisation of marriage, the respondent treated the petitioner with cruelty?

2. Does petitioner prove that respondent deserted the petitioner for a continuous period of 2 years?

3. Whether petitioner is entitled for divorce?

4. What decree or order?

6. The appellant-husband examined himself as P.W. 1 and exhibited one document marked as Ex. P. 1 while the respondent-wife examined herself as R.W. 1 without marking any documents. The Court below answered the issues in the negative and dismissed the petition. Being aggrieved by the said dismissal the husband has preferred this appeal.

7. The learned Counsel for the appellant sought to contend that cruelty was established by the criminal complaint for dowry harassment complaint filed by the respondent and the consequent acquittal. He further contends that the illicit relationship between the respondent and one Thimme Gowda as well as G.N. Ganganna were established by evidence. In addition the learned Counsels contends that the parties have been living separately for more than 20 years and therefore the willingness of the respondent to return to the matrimonial home is a farce and not bona fide. Therefore, he contends that the Court below had rendered erroneous findings on the issues.

8. Having heard the learned Counsel for the appellant what falls for our decision making in this appeal is whether the Court below was justified in dismissing the petition under Section 13 of the Act, filed by the appellant for dissolution of the marriage between the parties, in the facts and circumstances of the case.

9. The grounds for divorce by the appellant is one of adultery by the respondent and lodging a false complaint of dowry harassment causing cruelty to the appellant, in addition to desertion by the respondent of the company of the appellant. The evidence of P.W. 1, the appellant discloses that the people in the locality had said that the respondent had an illicit connection with Thimme Gowda. The appellant however, did not examine any person of the locality from whom he had heard of the said alleged connection of his wife. The appellant sought to sustain the said allegation on the basis of his sole self-interested testimony. The appellant admitted in his cross-examination that in the Birth Certificate, Ex. P. 1, the name of the father shown as Shivakumar is himself, which relates to the birth of a child on 10-12-1984 and the name of the mother is that of the respondent. The said Thimme Gowda, it is elicited in evidence was a witness in the criminal complaint filed by the respondent except for the oral testimony of P.W. 1, there is no corroboration of any independent witness to support the allegation of adultery committed by the respondent by living in the house of the said G.N. Ganganna. The marriage between the parties was during the year 1981 and the son was born to them during October 1984, which is not seriously disputed by the appellant both in pleadings or in evidence. The respondent though admitted that she was residing in the house of G.N. Ganganna explained the circumstances under which she was required to take shelter stating that her father had refused to accommodate her and therefore, the elderly person in the village had agreed to her residing in a room in the house of G.N. Ganganna, where she also does coolie work.

10. Mere physical separation would not amount to desertion. The 'animus deserendi' or the intention to bring cohabitation permanently to an end should exist. In fact, neglect by husband of his wife prima facie constitutes desertion. It is necessary for the husband to establish prima facie that the separation of the wife did constitute desertion by establishing that he did not neglect his wife. In the instant case the appellant has examined himself as P.W. 1 which is a self-

interested testimony and in the absence of any corroboration has failed to establish the desertion complained of.

11. The Supreme Court in the case of Vijaykumar Ramchandra Bhate v Neela Vijaykumar Bhate (2003)2 LRI 890 : 2003(3) Supreme 416, observes thus:

'Leveling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife would amount to the worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife for divorce being allowed'.

12. It is a well-established general principle that if any imputation against the character of any spouse is alleged without any foundation such reckless and baseless allegations of illicit relationship amounts to mental cruelty and will constitute a valid and sufficient justification for the spouse to stay away from the other. The appellant by reasons of conduct on his part, made it unbearable for the respondent-wife with reasonable self-respect to stay with him. So it is the appellant who is really responsible for the breakdown of the marriage. The Court below having arrived at a positive conclusion that the appellant had failed to establish the allegations of adultery by the wife, we do not see any ground for interference in the said finding.

13. In view of the aforesaid findings all other contentions of the appellant have to necessarily fail and are rejected.