

Hema Reddy Vs. Rakesh Reddy

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Court : Andhra Pradesh

Decided On : Jan-31-2002

Reported in : 2002(3)ALD640; 2002(2)ALT16; I(2003)DMC109

Judge : Ramesh Madhav Bapat and ;Dalava Subrahmanyam, JJ.

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

Appeal No. : CMA No. 150 of 2000

Appellant : Hema Reddy

Respondent : Rakesh Reddy

Advocate for Def. : Vilas V. Afzulpurkar, Adv.

Advocate for Pet/Ap. : V.L.N.G.K. Murthy, Adv. for M. Ravindranath Reddy, Adv.

Disposition : CMA allowed

Judgement :

Ramesh Madhav Bapat, J.

1. The appellant herein is the wife. The respondent herein is the husband. The husband-respondent herein filed OP No. 340 of 1996 in the Family Court at Secmiderabad for divorce under Section 13(1)(a), 13(1)(ib) and 13(1)(iii) of the Hindu Marriage Act. The learned Judge, Family Court, Secunderabad heard the

matter on merits and was pleased to allow the petition and the marriage between the appellant herein and the respondent herein solemnised on 11-12-1994 was dissolved by a decree of divorce. Aggrieved by the aforesaid order of the Family Court, the wife-appellant herein has filed the present appeal.

2. The averments made in the original petition can briefly be narrated as follows: The parties herein are referred to as 'petitioner and respondent' as arrayed in the original petition. The husband-petitioner stated in his petition that he is the son of Col and Mrs. T.R. Reddy, He is M.Sc with Horticulture. He is working with M/s, Harrison Malayalam Kerala. The respondent is the daughter of Sri B.N, Reddy, who is the former Member of Parliament. The marriage between the petitioner and the respondent was solemnised on 11-12-1994 at Secunderabad. It was an arranged marriage. The petitioner and his parents believed that the respondent would be a proper match to the petitioner. After the marriage on the first day itself the petitioner was alarmed to find certain unnatural behaviour in the respondent. The respondent was in the habit of scratching her hands and head now and then in a very irritating manner. She used to drop her head while sitting in the company of elders. Though the petitioner noticed the said fact during first two days of the marriage, the petitioner thought may be these are the mannerism of the respondent.

3. The respondent joined the petitioner in Kerala on 13-1-1995. The father of the respondent Sri B.N. Reddy came to drop the respondent at Kerala. During her stay in the matrimonial house, the respondent used to go into bouts of absolute silence. She never discussed the household activities.

4. It is further stated by the petitioner that the respondent was always feeling depressed in home sick. She became pregnant in the month of February, 1995. She went to her parents house to get herself examined by the Doctor. She went to stay with her parents in the last week of February, 1995 and she joined back the petitioner only in the month of April, 1995. Even after her return, her behaviour did not change. She was continuously in acute depression. She was advised that she should not take any medicine, as she was pregnant. But she used to consult her family Doctor at Hyderabad and Psychiatrist. Thus, it is stated

by the petitioner that the respondent had acute mental depression since her mother's death. The mother of the respondent died 3 to 4 years prior to her marriage. The Psychiatrist treated the respondent since then. Hence, it was contended by the petitioner that his consent for the marriage was obtained by the respondent and her parents fraudulently.

5. It is the further case of the petitioner that the respondent used to cut off herself from normal activities in the household duties as a housewife. She used to continue her cold demeanour and retired to her room. Under these circumstances, the cohabitation with the respondent was becoming more and more impossible.

6. It is the further case of the petitioner that at the instance of the petitioner, the sister of the respondent came to stay with them at Kerala. She stayed for about 20 days i.e., till 16-5-1995. Still things did not improve. The sister of the respondent planned to return to Hyderabad. When the respondent and the petitioner went to see off her sister at the Cochin Air Port, the respondent broke down at the Air Port itself and started crying. She insisted that she wants to accompany her sister to Hyderabad on the same day itself. Unfortunately the flight was late and the tickets were available and therefore the respondent went along with her sister to Hyderabad in the month of May, 1995.

7. It is the further case of the petitioner that the respondent was hospitalised in Swapna Nursing Home at Hyderabad. She was advised to take complete rest. The petitioner requested the respondent to stay along with her parents but the respondent refused. The respondent used to ridicule the petitioner on his meagre salary and used to call upon him to work with her father.

8. It is the further case of the petitioner that the respondent's doctor disclosed that the respondent had abnormal uterus and therefore she was advised to undergo for abortion. Accordingly she was aborted. Thus, the respondent was suffering from acute depression. The respondent was suffering with bio-chemistry problem.

9. It is the further case of the petitioner that the respondent tried to commit suicide by going to the waterfall in a car. When the petitioner came to know about the said fact through the servants, he immediately rushed to the waterfall and saved her.

The petitioner had taken the respondent to Kovalam Beach. Even at Kovalam Beach, the respondent walked towards the water in a danger rocky area where already a danger sign was put up. The life-guard was already whistling to her to come back. The petitioner somehow managed to stop the respondent and brought her to the hotel.

10. It is the further case of the petitioner that he was shocked with the behaviour of the respondent; the petitioner decided to go to Hyderabad and accordingly the respondent was taken to Hyderabad. During the journey, the respondent stated that she is not in a position to lead marital life with him at Kerala. Thus, it is stated by the petitioner that the respondent is suffering from mental depression and acute depression of state of mind; as such the petitioner cannot live with the respondent. With these averments, it was prayed by the petitioner that his marriage with the respondent be dissolved by a decree of divorce.

11. The respondent-wife was served with summons. On appearance she filed her counter. The contents of the petition filed by the petitioner have been denied by the respondent. It is not necessary to narrate what she stated in the counter filed by her. But suffice it to say that the contents were denied by the respondent. She further stated that she is not suffering from any mental disorder. She was feeling lonely at Kerala. The petitioner has developed a story of mental disorder with ulterior motive. The petitioner is interested in getting married with another girl, who is a close relative of the petitioner and therefore the present petition has been filed. Therefore, it was prayed by the respondent that the petition filed by the petitioner be dismissed with costs.

12. Parties to the petition were allowed to lead evidence. The petitioner examined himself as PW1 and the respondent examined herself as RW1. No other witnesses were examined by them to prove their respective contentions.

13. On the strength of the pleadings, the learned Judge, Family Court, Secunderabad, framed the following issues :

(1) Whether the respondent has treated the petitioner with cruelty and deserted him for a continuous period of not less than two years immediately preceding the

presentation of the petition?

(2) Whether the respondent has been suffering continuously or intermittently from mental disorder of such a nature that the petitioner cannot live with her?

(3) Whether the petitioner is entitled for dissolution of the marriage on the grounds stated in the petition?

14. The learned Counsel Mr. V.L.N.G.K. Murthy appearing on behalf of the wife-appellant herein submitted at the Bar that though the petitioner pleaded that his consent to the marriage was obtained by fraud, no issue was framed to that effect. Moreover, the petitioner did not lead any evidence to show that his consent to the marriage was obtained by fraud. The learned Counsel further submitted that, as a matter of fact, though the pleading of fraud is pleaded in the petition, no such evidence was led and therefore it is not necessary for us to discuss the said issue.

15. The only main point arises for our consideration whether the petitioner has been able to prove that the respondent has been suffering continuously or intermittently from mental disorder of such a nature that the petitioner cannot live with her?

16. The learned Counsel for the husband-petitioner submitted at the Bar that looking to the pleadings and also looking to the evidence relied on behalf of the petitioner, it has been the specific case of the petitioner that the respondent was suffering from mental depression. It has not been his case that the respondent was suffering continuously or intermittently from mental disorder. The learned Counsel for the wife-respondent further submitted at the Bar that the pleadings and the evidence relied by the petitioner is no ground to grant a decree of divorce. The learned Judge erroneously decreed the petition granting divorce.

17. By looking to the evidence of the petitioner, it appears that the petitioner has led the evidence to prove the fact that the respondent was suffering from mental depression. The petitioner has led his own evidence. The petitioner has quoted one instance wherein he stated that the respondent did not co-operate with him in the matrimonial house. The respondent comes from an affluent family. All the things

were provided by the petitioner in the matrimonial house. There were two servants for cooking and doing other household work. Out of them, one servant was Telugu speaking person. The petitioner used to come home for lunch at about 1-00 or 1-30 p.m., and he used to return home at 6-00 or 6-30 p.m. Therefore, it cannot be said that the respondent was left all alone in the matrimonial house.

18. It appears from the record that the respondent had lost her mother 3 to 4 years prior to the marriage and she was in mental depression. Secondly the respondent had to undergo abortion and therefore she again went in depression. Thus, these may be the two more causes as to why the respondent suffered depression.

19. The petitioner has stated in his evidence that he has given two instances to prove that the respondent had developed a tendency to commit suicide. One instance he has given in his evidence is that the respondent in his absence took the car on non-motorable roads and dashed at many places and ultimately she went to a waterfall with an intention to commit suicide. The petitioner came home for lunch. When he noticed the absence of the respondent, he made enquiries with his domestic servants. On their information he went towards waterfall on a bicycle and saw that the respondent was entering into the water for committing suicide. The petitioner went there and saved her. This oral evidence was given by the petitioner. He has not given any corroborative evidence. At least he could have examined his servants to prove the fact that the respondent had left the house and went towards waterfall. Therefore, this instance, which is quoted by the petitioner in his evidence, has to be viewed with a caution.

20. One more instance the petitioner has given regarding the attempt made by the respondent in committing suicide when he had taken her to Kovalam Beach for a change. The petitioner has stated in his evidence that the respondent went towards a danger area. The life-guard, who was present at the sea-shore, whistled in order to stop the respondent from going towards the danger area of the sea, a rocky place. It has been the contention and evidence of the petitioner that the respondent went towards the danger area with an intention to commit suicide. On this aspect also the petitioner has given in his own interested evidence. He did not examine the lifeguard, who was present at the sea-shore. Therefore, we are of the

considered view that the evidence led by the petitioner, which is an interested statement, is not sufficient to prove the fact that the respondent had developed the tendency to commit suicide.

21. Whatever the instances have been quoted by the petitioner alleged to have occurred within a period of seven years of the marriage. If at all, the attempt, as alleged by the petitioner, could have been successful, the petitioner would have been liable for prosecution for an offence punishable under Section 304-B IPC. The petitioner is an educated man having Post-graduate qualification. He did not inform the police regarding the attempts of suicide made by the respondent. Therefore, we are of the considered view that the evidence led by the petitioner on this aspect is tainted with doubt.

22. The respondent while giving evidence rebutted the oral evidence led by the petitioner. But it is stated by the respondent that the petitioner was interested in getting married with another girl, who was a close relative of the petitioner. The learned Counsel for the petitioner submitted at the Bar that making such allegation, which is false and not proved, itself is cruelty and therefore the petitioner is entitled for a decree of divorce.

23. After discussing the above evidence, we have to decide as to whether the grounds raised by the petitioner stand proved.

24. It has been the evidence of the petitioner throughout that the respondent had psychological depression. The depression by itself is no ground under the Hindu Law to grant a decree of divorce. The petitioner has to prove by leading medical evidence that psychological depression is synonymous to the mental disorder. Mental disorder is a ground under Hindu Law to grant a decree of divorce. Admittedly the petitioner did not lead any oral as well as documentary evidence by examining the Doctor. Therefore, we are of the considered view that the mental depression itself, if at all, the respondent is suffering, cannot be a ground for divorce. Even the fact of mental depression is not proved by the petitioner by leading cogent evidence.

25. The learned Counsel Mr. Vilas V. Afzulpurkar appearing for the husband-petitioner submitted at the Bar that on a false ground itself that the petitioner is interested in getting married with some other girl amounts to cruelty. While rebutting the aforesaid arguments, the learned Counsel for the wife-respondent relied upon a ruling reported in *Naval Kishore Somani v. Poonam Somani*, AIR 1999 AP 1, in which the Division Bench of this Court was pleased to discuss 'what is meant by 'proved, not proved and disproved' as contemplated under Section 3 of the Indian Evidence Act. Section 3 of the Indian Evidence Act gives definitions of various words and expressions. The expression 'proved' is followed by the definition of the expression 'disproved'. This is followed by the definition of 'not proved'. A fact is said to be 'not proved' under Section 3 of the Indian Evidence Act when it is neither proved nor disproved. On the other hand, a fact is said to be disproved when, after considering the matter before it, the Court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. The word 'disproved' is akin towards false, which is disproved is normally said to be a false thing.'

26. If these definitions are taken into consideration, we can at the least say that though the respondent pleaded and has given evidence that the petitioner is interested in getting married with another girl is not proved. It does not mean that it is a false allegation made against the petitioner herein, which may amount to cruelty. Therefore, the said contention raised by the Counsel for the respondent has to be rejected.

27. As far as the cruelty aspect is concerned, the learned Counsel for the wife-respondent relied upon a ruling reported in *Shobha Rani v. Madhukar Reddi*, : [1988]1SCR1010 . In paras 4 and 5 of the judgment their Lordships were pleased to hold as under:

'4. Section 13(1)(i-a) uses the words 'treated the petitioner with cruelty'. The word 'cruelty' has not been defined. In deed it could not have been defined. It has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. It is a course of conduct of

one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical the Court will have no problem to determine. It is a question of fact and degree. If it is mental the problem presents difficulty. First, the enquiry must begin as to the nature of the cruel treatment. Second, the impact of such treatment in the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and *per se* unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

5. It will be necessary to bear in mind that there has been marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes complaint about the treatment of cruelty by the partner in life or relations, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the Judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in *Sheldon v. Sheldon*, (1966) 2 All ER 257 (259) 'the categories of cruelty are not closed'. Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct, which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful/realm of cruelty.'

28. The learned Counsel Mr. Murthy further relied upon a ruling reported in V. Bhagat v. Mrs. D. Bhagat, : AIR 1994 SC710 . In para 17 of the judgment their Lordships were pleased to discuss as to what is meant by 'mental cruelty' as defined under Section 13(1)(ia) of Hindu Law. Their Lordships observed as under:

'17. Mental cruelty in Section 13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.'

29. As against the above rulings, the learned Counsel for the petitioner relied upon a ruling reported in Chiranjeevi v. Lavanya @ Sujatha, : 1999(2)ALD508 (DB). This is the judgment of the Division Bench of this Court. Their Lordships were pleased to hold at para 8 as under:

'8. For the proposition that when the wife ill-treats the husband, the husband is entitled for divorce, the learned Counsel for the appellant, relied upon the view taken in Shobha Rani v. Madhukar Reddi, (1998) 1 SCC 105, wherein it was held that the evidence of harassment or of intention to treat with cruelty is not essential to establish cruelty and the Court would draw inference and decide on the basis of preponderance of probabilities having regard to the nature of conduct of the other spouse and its impact on the complaining spouse in the context of their standard

of life. For the same proposition the learned Counsel relied upon a decision in *Trivedi v. Trivedi*, 1993 (3) Scale 541, wherein it was held as follows: 'Whether the allegation of the husband that she was in the habit of associating with young boys and the findings recorded by the three Courts are correct or not but what is certain is that it is obvious that the marriage of the two cannot in any circumstances be continued any further. The marriage appears to be practically dead as from cruelty alleged by the husband it has turned out to be at least intimacy of the husband with a lady doctor and unbecoming conduct of a Hindu wife.'

The learned Counsel also relied upon another decision of the Supreme Court in *V. Bhagat v. D. Bhagat*, : AIR 1994 SC710 , wherein it was observed thus:

'.....In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusions regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively.'

The learned Counsel further relied upon a Division Bench decision of this Court in *K. Lalithikumari v. K. Rama Prasada Rao*, 1992 (1) ALT 631, wherein it was observed that there are any number of instances wherein wife humiliated and insulted husband and treated him most cruelly and wife behaving with her husband in a most inhuman way abusing him on every occasion and humiliating and harassing him in numerous ways and in such extreme cases granting of relief of divorce by trial Court on the ground of cruelty is justified when the husband seeks relief of divorce on the ground of cruelty by wife,'

30. The learned Counsel further relied upon a ruling reported in *K. Radha Raju v. K. Seetharama Raju*, : 2001(6)ALD460 . This is the judgment of the Division Bench of this Court. In para 19 of the judgment, the Division Bench of this Court held as under:

'It is also relevant to note one of the important changes brought about by reason of the amendments under the Marriage Laws (Amendment) Act (68 of 1976). By virtue of the said Amendment Act, Clause (ia) has been added to Sub-section (1) of Section 13 of the [Hindu Marriage Act, 1955](#) under which 'cruelty' has been made one of the grounds for obtaining divorce. However, under Section 13(1)(ia) cruelty simplicitor is made a ground to seek a decree of divorce and it is not necessary to establish that the other party has treated the petitioner with such cruelty as to cause a reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party. Prior to Amendment Act, 1976 when cruelty was a ground only to seek judicial separation under Section 10 of the Act it is obligatory on the part of the petitioner to prove that the mental cruelty is such as to cause injury to the health of the petitioner. Now the said requirement is not existing under Section 13(1)(ia).'

31. Considering the above rulings and also applying the said rulings to the present set of facts, this Court is of the considered view that as far as the cruelty aspect is concerned, it can only be said that the respondent was not able to prove that she was treated with cruelty. It does not mean that she had raised any false contentions.

32. We have already discussed in the foregoing paragraphs of the judgment that as far as the aspect of the respondent suffering from mental disorder, which is a ground for divorce, has not been proved by the petitioner at all. In fact, the mental disorder has to be proved by leading medical evidence. It does not mean that we are proposed to lay down with the mental disorder cannot be proved by any other type of evidence. In the present case, the petitioner has led his own evidence only which is not at all corroborated by another evidence. Therefore, we are of the considered view that the decree of divorce granted by the Family Court, Secunderabad is erroneous and therefore it is set aside.

33. Thus, the CMA., stands allowed. Under the circumstances discussed above, there will be no order as to costs.