

V. Jyothi Vs. V. Suresh

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Court : Andhra Pradesh

Decided On : Jul-18-2000

Reported in : 2000(5)ALD153; 2000(5)ALT10; I(2001)DMC145

Judge : B. Subhashan Reddy and; Ghulam Mohammed, JJ.

Acts : [Hindu Marriage Act, 1955](#) - Sections 10 and 13(1)

Appeal No. : CMA No. 2241 of 1997

Appellant : V. Jyothi

Respondent : V. Suresh

Advocate for Def. : Mrs. C. Jayashree Sarathy, Adv.

Advocate for Pet/Ap. : Mr. R. Vijayanandan Reddy, Adv.

Judgement :

ORDER

Ghulam Mohammed, J

1. This is a matrimonial dispute arising out of a petition filed by the husband, respondent herein, seeking judicial separation from his wife under Section 10 of the Hindu Marriage Act. The Court below by order dated 2nd July, 1997 in OP No.211 of 1996 ordered judicial separation. Being aggrieved by that order, the respondent-wife, who is appellant herein, preferred this appeal.

2. Brief facts of the case are as follows:

On 9-2-1992, the marriage between appellant and the respondent herein was performed at Mahboob Mansion, Tamaka, Secunderabad. It was a love marriage performed according to the Hindu customs and rites. The marriage was consummated, but no children were born to them. Both the parties know each other prior to their marriage. The respondent-husband hails from Mudaliar community, and the appellant-wife is Naidu by caste. At the time of marriage, the appellant herein, who is an engineering graduate, was employed in Advanced Radio Mast Limited and the respondent herein is a Diploma holder in printing technology.

3. The respondent-husband stated that the appellant-wife is suffering from acute form of rheumatic arthritis involving severe pain in joints and insisting the husband to shift her to her mother's place at Warasiguda, and that she used to indulge in offensive and indecent language while addressing not only her husband but also his parents. Further, the appellant-wife also used to visit her mother's rented house without the permission of the husband and used to come late in the night; that though the appellant was getting a monthly salary of Rs.5000/-she was hardly spending anything for the maintenance of the house and that the respondent further attributed recalcitrant and stubborn attitude of the wife and her aggressive and irresponsible conduct and that he addressed a letter to her brother seeking intervention and that there was no response to the said letter and having come to know about the letter written by the respondent-husband, the appellant became offensive and picked up quarrels at frequent intervals and she started saying that the petitioner is unfit to be her husband and she is not interested in staying with him as his wife and that the appellant-wife went to the extent of removing her 'Thali' from her neck and threw it out and she left the house on 12th December, 1993 around 7.00 p.m. On 14th December, 1993 she returned to his house. But she did not ask the husband where he had gone and where he had his dinner. She did not prepare any dinner to the respondent. On 15th December, 1993 at about 3.00 a.m., the appellant woke the respondent from sleep and questioned him as to where he had gone and where he spent two days. The appellant started abusing the respondent and his relations in filthy language.

When the respondent refused to react, the appellant pushed him from the bed and started abusing that he does not react to her provocations and that he is more like an errand-boy rather than her husband. The respondent-husband addressed a letter Ex.A1 dated 15-3-1993 to the wife asking her to agree for mutual divorce in order to avoid embarrassment for both. The said letter was sent by registered post and also under certificate of posting to ensure its delivery on her residential address as well as at her mother's place at Mettuguda. Though the appellant received the said letter, she deliberately chose to remain silent for the reasons best known to her. It is further stated that his wife was nagging and causing irritation and interfering in his business. The appellant's brother came from America and the respondent approached him to sort out the matter and inspite of it, the strained relation continued and the reconciliation effort failed. Further, the respondent-husband alleged that the appellant is bent upon implicating him in criminal cases on false allegations and even threatened him of such action and miserable consequences. Thus the respondent-husband attributed mental torture and cruelty on the part of the appellant wife and prayed the Court to grant judicial separation.

4. The appellant-wife, respondent therein, filed counter agreeing the inter-caste marriage and that they both fell in love in 1989 and that she helped him in many ways in developing his business since she being a graduate in Engineering whereas the respondent herein is a diploma holder in printing technology and he used to seek the help of the appellant in almost all the matters. It is also stated that after the marriage they went to Tirupathi and walked up to seven hills along with her husband. The husband thereafter took her to New Delhi, Merrut and Mussori for honey moon. She denied that she was suffering from arthritis. She is a dynamic personality having excellent record in Athletics. She stated that she never abused the family members of her husband and that she used to give prior information whenever she visited her mother's house and her friends house and she used to visit the office of the respondent prior and after their marriage and helped him to develop the business. Except 'Thali' nothing was presented to the appellant and her mother gave Rs.10,000/- to purchase gold ring and clothes and that she never removed her 'Thali', that her husband used to beat her unnecessarily and that she maintained good relations with in-laws even after

shifting to West Maredpally, that she used to pay visits to her in-laws house; that she also invited her parents-in-law for 'Pooja' on Deepavali day; that on 14-9-1993 both the husband and the wife went to a Hotel and had a dinner and that the husband being a businessman having achieved what all he can, now wanted to get rid of her for one reason or other.

5. She also stated that the respondent-husband has not reported to the house for two days and only on 14-12-1993, he came in the midnight and slept without even talking to her. Before that, she made a call to her in-laws house at Tarnaka and as there was no response, she rang Dr. Mani, who is the respondent's cousin's wife. The appellant threatened her that he is going to file a petition for divorce and he left the house on 14-12-1993 without any reasonable cause. The appellant on 18-12-1993 after returning from office, received a letter at 6 p.m., from the respondent husband and that she immediately went to the address given in the letter, but the door was locked. Next day also she went to the same house but neither the respondent's uncle nor the respondent were present. The respondent's uncle informed that the respondent-husband was not staying in that flat. She further stated that her brother requested her husband not to ruin the life of his sister and the appellant's brother's intervention for reconciliation too failed. On the above pleadings, the respondent-husband, petitioner therein, examined himself as PW1 and another witness as PW2 and got marked Exs.A1 to A24. Whereas on behalf of the appellant, respondent therein, she examined as RW1 and no documents were marked.

6. On a consideration of both oral and documentary evidence available on record, the trial Court believed the evidence of PWs.1 and 2 and also Ex.A1 a letter addressed by the respondent-husband indicating her behaviour and her act of throwing 'Mangala Sutram' at his face, and also the fact that no reply was given by the appellant to the husband for the above letter. The learned Judge found that the silence adopted by the appellant-wife shows that she behaved in the manner as mentioned in Ex.A1. The trial Court, however, curiously construed the silence on the part of the appellant attributing and treating as mental cruelty and relied on subsequent letters Exs.A6 to A13 to the effect that the relationship between the parties was strained. PW1 is the respondent-petitioner, PW2 who is a partner of

PW1 in his workshop and he is not an impartial witness and his evidence cannot be believed in to to. The trial Court found that in view of the strained relationship between the parties and it is not possible for them to live together in peace.

7. Learned Counsel for the appellant Sri Vijayananda Reddy contended at the Bar that the entire approach of the Court below is incorrect as there is no instance of any ill treatment and also utterance of filthy language against the husband and insistence of the wife to have a separate residence is a justifiable demand and that cannot be a ground for judicial separation and that act of throwing her 'Mangal Sutra' not being proved, the trial Court merely relying on a letter Ex.A1 written by the respondent husband observed that in the absence of any reply, the appellant behaved in the manner as indicated in Ex.A1 without being proved by any cogent or direct evidence. The entire findings reached by the trial Court are not based on any cogent and valid reasons and the trial Court committed error in granting judicial separation. He further contended that when the wife filed a petition seeking restitution of conjugal rights in the year 1994, this petition seeking judicial separation was filed by the husband only as a counter blast. He submitted that the trial Court committed error in granting judicial separation.

8. To counter the argument, learned Counsel for the respondent-husband Smt. Jayasri Sarathy contended that the entire approach of the Court below is proper and the trial Court rightly granted judicial separation relying upon the judgments mentioned therein. She contended that throwing 'Mangala Sutra' would itself constitute mental cruelty and likewise. In support of her contentions she relied upon the judgments of Supreme Court in *Dastane v. Dastane*, : [1975]3SCR967 , *S. Hanumantha Rao v. S. Ramani*, : [1999]2SCR296 . She also relied on judgments reported in *Siddagangaiah v. Lakshamma*, AIR 1968 Mys. 115, *A'. Sreepadachar v. Vasantha Bai*, AIR 1970 Mys. 232, *G. Narasimulu Chetti v. S. Panduragaiah*, : AIR 1996 AP24 , *Ashok v. Santosh*, : AIR1987 Delhi63 , *D. Manga v. D. Venkata Ramana*, : 1999(6)ALT141 , *Chiranjeevi v. Lavanya*, : 1999(2)ALD508 , and in *Manisha Jha (Smt.) v. Kunal Kantijha*, 1 (1999) DMC 282, with regard to throwing of 'mangalsutra' on the face of the respondent.

9. The Supreme Court in Dastane's case (supra) held that the petitioner need not establish the charge of cruelty beyond reasonable doubt. The relevant portion of the judgment reads as under :

'The belief regarding the existence of a fact may be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the Court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second.'

10. The Supreme Court in S. Hanumantha Rao's case (supra) has observed as follows :

'Before we deal with the submission it is necessary to find out what is mental cruelty as envisaged under Section 13(1)(ia) of the Act. Mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and the husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In otherwords, the party who has committed wrong is not expected to live with the other party. It is in this background we have to test the argument raised by the learned Counsel for the appellant. The respondent after having admitted the removal of mangalsutra stated that while in privacy the husband often used to ask her to remove the chain and bangles. She has also stated that in her parents' house when her aunt and mother used to go to the bathroom they used to take out mangalasutra from their neck and therefore she thought that she was not doing anything wrong in removing the mangalasutra when she was asked to do so by her husband. She also stated that whenever she removed her mangalsutra, she never thought of bringing an end to the married life and was still wearing her mangalasutra; and it is when her husband made a hue and cry of such removal of mangalsutra, she profusely apologised. From all these evidence the High Court concluded that the incident was blown out of proportion and the appellant

attempted to take advantage of the incident by picturing the same as an act of cruelty on the part of the wife. The question, therefore, arises whether the removal of the mangalsutra by the wife at the instance of her husband would amount to mental cruelty within the meaning of Section 13(1)(ia) of the Act. It is no doubt true that mangalsutra around the neck of a wife is a sacred thing for a Hindu wife as it symbolises continuance of married life. A Hindu wife removes her mangalsutra only after the death of her husband. But here we are not concerned with a case where a wife after tearing her mangalsutra threw it at her husband, walked out of her husband's house. Here is a case where a wife while in privacy, occasionally has been removing her mangalsutra and bangles on the asking of her husband with a view to please him. If the removal of mangalsutra was something wrong amount to mental cruelty, as submitted by the learned Counsel for the appellant, it was the husband who instigated his wife to commit that wrong and thus was an abettor. Under such circumstances the appellant cannot be allowed to take advantage of a wrong done by his wife of which he himself was responsible. In such a case the appellant cannot be allowed to complain that his wife is guilty of committing an act of mental cruelty upon him, and further by such an act, has suffered mental pain and agony as a result of which married life has broken down, and he is not expected to live with his wife. It also appears to us that whenever the appellant asked his wife for removal of her mangalsutra, the respondent never comprehended that her husband at any point of time would react to such occurrences in the way he did. Under such circumstances, the appellant was not expected to have made an issue out of it. We are, therefore, of the view that removal of mangalsutra by the respondent would not constitute mental cruelty within the meaning of Section 13(1)(ia) of the Act.'

11. However, there is no dispute with regard to the above propositions laid down in those judgments. It is pertinent to note that in the instant case the respondent husband has not proved the cruelty on the part of the appellant-wife as contemplated under Section 13(1)(ia) of the Hindu Marriage Act, particularly the mental cruelty. The allegations of cruelty without sufficient particulars are not sufficient to discharge the burden of proof which lies on the respondent-petitioner, who is seeking judicial separation. In the instant case the respondent-husband having not specified sufficient particulars, the finding of the Court below that the

relationship between the parties is strained is not a ground for judicial separation. Burden lies on the party which affirms a fact, not the party which denies it. Strained relations at one point of time itself are not the grounds as contemplated under the provisions of Hindu Marriage Act, for granting judicial separation. Thus, under the circumstances of the case, the appeal is allowed by setting aside the order passed by the Court below in OP No.2 of 1996 granting judicial separation.

12. The appeal is accordingly allowed. No costs.

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