

(2002) 10 AP CK 0033

Andhra Pradesh High Court

Case No: A.A.O. No. 2578 of 2000

Kotti Veera Venkata Padmavathi

APPELLANT

Vs

Kotti Sriram

RESPONDENT

Date of Decision: Oct. 1, 2002

Acts Referred:

- Hindu Marriage Act, 1955 - Section 13(1)
- Penal Code, 1860 (IPC) - Section 498A

Citation: (2002) 6 ALT 318 : (2003) 1 DMC 383 : (2003) 2 RCR(Civil) 380

Hon'ble Judges: Ramesh Madhav Bapat, J; M. Narayana Reddy, J

Bench: Division Bench

Advocate: C.V. Mohan Reddy, for the Appellant; V.V.L.N. Sarma, for the Respondent

Final Decision: Dismissed

Judgement

Ramesh Madhav Bapat, J.

This is an appeal by the wife-appellant herein. She was aggrieved by the order dated 17.1.2000 passed in O.P. No. 1 of 1992 by the Senior Civil Judge, Bhimavaram.

2. The husband-respondent herein had filed the aforesaid O.P., against the wife-appellant herein. The parties are arrayed as in the O.P.

3. The husband-petitioner filed the aforesaid O.P. u/s 13(1)(ia) of the Hindu Marriage Act seeking for a decree of divorce against the wife-respondent.

4. The averments made in the petition can briefly be narrated as follows: The husband-petitioner states that the marriage between the petitioner and the respondent was performed on 30.5.1990 as per Hindu Vedic rites. The respondent joined the petitioner after a lapse of seven months for the first time in Bhimavaram. She lived only for a short period of 15 days. The respondent even during the said period did not lead happy marital life with the petitioner. The respondent was always telling that she had no liking towards the petitioner and her marriage was

performed with the petitioner against her will. The respondent never cared the petitioner nor attended to any of the comforts. She also did not confer any conjugal happiness to the petitioner. The respondent at the instance of her parents and brothers used to raise unnecessary disputes with the petitioner and abused him in filthy language. The petitioner, on enquiry, came to know that the respondent was in Vizag. He went there with the hope to bring her back to Bhimavaram but his efforts proved futile. She was openly telling that she never liked the petitioner and the members of his family and, therefore, she cannot lead a happy marital life.

5. It is further averred by the petitioner that at last he was successful in bringing the petitioner to Bhimavaram on 17.2.1991. But the respondent repeated the same story by using abusive language towards the petitioner and she used to lower down before the neighbours. She never treated the petitioner with respect. Her language always used to be abusive and abscene. She was hurling utensils against the petitioner and thus she was treating the petitioner with cruelty. She left the house of the petitioner on 4.4.1991 and deserted the petitioner since then. The petitioner made enquiries about the respondent. The petitioner came to know the whereabouts of the respondent at Vizag. At the time of leaving the house, the respondent took away her gold jewellery, cash and movables of the petitioner worth Rs. 40,000/-. The petitioner wanted to take appropriate action for that. He made several efforts with a hope that the respondent would mend herself and would lead a happy marital life with the petitioner.

6. It is further stated by the petitioner that on 14.1.1992 as a final resort, the petitioner went to the respondent's parents' house and even on that day the respondent, her parents and brothers more particularly her brother Mr. G.D. Prasad abused the petitioner in filthy language and pushed him down and attempted to beat him and also fisted on his stomach causing bodily injury. The respondent was watching the fun but she never objected. The petitioner reported the matter to the police but no action was taken by the police.

7. It is further stated by the petitioner that the respondent has been suffering from incurable disease like unsound mind and she has been suffering continuously or intermittently and, therefore, it is impossible to stay with her. With these averments, the petitioner filed the aforesaid O.P. for divorce.

8. The respondent appeared on summons. She filed her counter. She admitted that the marriage between the petitioner and herself took place on 30-5-1990 according to Hindu Vedic rites. She stated that her parents had given an amount of Rs. 1,50,000/- in cash and also valuable Saris and Samans to the petitioner. In addition to the above amount, 30 sovereigns of gold were given to the respondent at the time of her marriage. She further stated that the marriage had consummated at Vizag on the third day of the marriage.

9. It is further stated by the respondent that the petitioner stayed at Vizag in the house of her parents for about a week after the marriage, thereafter they went to the house of the petitioner's parents at Machilipatnam and they stayed there for about 3 days and returned back to Vizag and thereafter they went to Bhimavaram.

10. It is further stated by the respondent that frequently the petitioner used to visit Vizag and the respondent was treating him with love and affection. They enjoyed the happiness in the marital life. They also visited Tirupathi, Madras and some other places in South on honeymoon trip in the month of July 1990.

11. It is further stated by the respondent that she understood from the talks of the petitioner that he had more desire to get more money from her parents. He used to tell the respondent that he was not satisfied with the presentations given to him at the time of the marriage. The respondent told the petitioner that her parents were not sound in financial position to give more money. The respondent further stated that she was always willing to stay with the petitioner but the petitioner developed ill-feelings and began to insult the respondent. She further stated that during one of the visits to Vizag, in the first week of August, 1990, during night time, the petitioner abused the respondent in filthy and vulgar language and threatened her to beat and also warned her that he would not set up the family at Bhimavaram unless the respondent brings more money and gold from her parents. The respondent was shocked to see the attitude of the petitioner. Thus, it is seen from the averments made by the respondent that she not only denied the allegations made by the petitioner but also imputed cruelty on his part and ultimately it was prayed by the respondent that the petition filed by the petitioner be dismissed with costs.

12. On the strength of the pleadings put forward by the parties, the learned Judge framed the following issues:

(1) Whether the respondent (wife) had treated the petitioner (husband) with cruelty to dissolve the marriage dated 30.5.1990 solemnized between the petitioner and the respondent ?

(2) Whether the respondent has been incurable of unsound mind or has been suffering continuously or intermittently from mental disorder of such a kind and of such an extent that the petitioner cannot reasonably be expected to live with the respondent ?

13. It is seen from the record that the petitioner examined himself as PW 1 He examined one witness as P.W. 2 named Kotti Rama Rao. The respondent examined herself as R.W. 1 and she also led evidence of Smt. P. Shakeela as R.W. 2. The witness examined on behalf of the petitioner is no other than the father of the petitioner and the witness examined on behalf of the respondent is no other than the mother of the respondent.

14. In evidence it is stated by the petitioner that he was working as Development Officer in L.I.C. The marriage between him and the respondent was settled through the mediator and accordingly the marriage was performed. Earlier to the marriage, betrothal ceremony was also performed on the same day.

15. The learned Judge observed that voluminous evidence was led by both the parties and raised many points which are not narrated in the O.P. as well as in the counter.

16. According to the version of P.W. 1, after the marriage he stayed along with the respondent at Vizag only 4 or 5 days. Afterwards they went to Machilipatnam where his parents reside and reception was performed and thereafter the respondent went to her parents' house at Vizag. The petitioner returned to Bhimavaram from Machilipatnam where he was working as an employee in L.I.C. P.W. 1 further stated that after 7 months his wife joined him at Bhimavaram. She was not interested in leading marital life with the petitioner. She stayed only 15 days at Bhimavaram and went to her parents house. It is further stated by the petitioner in his evidence that the respondent came to the matrimonial house again in the year 1991 but her attitude did not change. It is further stated by him that she was using abusive language and insulting him. She left the matrimonial house at Bhimavaram on 6.4.1991.

17. According to the version of R.W. 1, she went to the house of her parents because she was attacked with chickenpox. She started giving explanations for leaving the matrimonial house. She further stated that she gave birth to a child on 17-11-1991 and she was constrained to stay at Vizag on medical grounds. There were no laches on her part. It appears from the evidence of both the parties that after the marriage in the month of July, 1991, they went to honeymoon trip to Tirupathi, Madras etc., and visited Brundavan Garden at Mysore and they returned home. According to the version of the petitioner, he could not enjoy honeymoon trip because of the reluctance of the respondent. She used to complain that her marriage was performed against her will and that she does not want to lead marital life with the petitioner. On the contrary, the respondent stated that her husband is greedy and he wanted to extract more money from the parents of the respondent. His father supported the version of the petitioner and her mother supported the version of the respondent.

18. As far as the mental illness is concerned, this Court is of the considered view that the said fact is not proved on record.

19. It is also not in dispute that after filing of the divorce petition, the wife filed maintenance case as well as criminal case u/s 498-A, I.P.C. in which the petitioner was acquitted.

20. Now the question arises for our consideration as to whether the respondent-wife has wilfully deserted the petitioner?

21. As stated earlier, there has been voluminous evidence in this case. It is proved from the record that the respondent was not interested in leading matrimonial life with the petitioner. It is also a fact that the respondent had filed a case subsequent to the filing of the aforesaid O.P. by the husband u/s 498-A, I.P.C

22. The learned Counsel Mr. V.V.L.N. Sarma appearing on behalf of the respondent relied upon a ruling reported in [D. Manga @ Mangamma Vs. D. Venkata Ramana](#), This is the judgment of our High Court decided by the Bench in which the learned Brother Judges of our High Court were pleased to hold in para (21) as under;

"Courts have held that cruelty could either be physical or mental. Petitioner is a Judicial Officer and he is expected to lead a disciplined life. He has been pleading that his wife with the connivance of her family members, in particular, with the aid of her brother who is an influential Forest Officer, has been insisting him to improve his financial position by any means, which is not to the liking of the petitioner. This is the root cause of the trouble between the parties. The brother of the respondent played an active role in this regard as is found through the evidence and he tried to use all methods to make the petitioner fall in his line of thinking to make illegal money. Towards that direction, he provoked his sister (respondent) against her husband as a result, the happiness in the married life of the petitioner and the respondent is short lived."

23. The learned Counsel also relied upon one more ruling reported in [K. Radha Raju Vs. K. Seetharama Raju](#), . Their Lordships in the Head Note was pleased to hold as under:

"Hindu Marriage Act, 1955-Sections 13(1)(ia) and 9-Divorce on the ground of cruelty-It is not necessary to establish that cruelty is such as to cause a reasonable apprehension that it would be dangerous for the petitioner to live with his spouse-Though the petitioner could not establish prior to the filing of the petition but subsequent to the filing of the petition, the wife gave false complaints to the police in respect of alleged harassment made one year prior to leaving the matrimonial home, resulting in the arrest of the petitioner-She filed also a complaint with Women Protection Cell in respect of incidents happening one year back and thus maligning and harassing the petitioner-These acts certainly constitute cruelty and the Court below is justified in ordering dissolution of marriage-Further, for the same reasons the wife is not entitled to seek restitution of conjugal rights."

24. The learned Counsel further relied upon a ruling reported in Sukhdev Kaur (Grewal) v. Ravinder Singh Grewal (1997) DMC 69 . It is a judgment of the Division Bench of Calcutta High Court. The learned Brother Judges were pleased to hold in para (6) as under:

"There is no doubt - and it can be noted as a general proposition - that unsubstantiated allegations of cheating, criminal breach of trust or criminal misappropriation against husband or against the mother of the husband and filing

of criminal case on such unsubstantiated allegations would no doubt constitute cruelty on the part of the wife. There is no gainsaying that filing of a criminal case on unsubstantiated allegations of offences of cheating, criminal breach of trust and criminal misappropriation is sure to cause humiliation and mental agony to the husband."

25. In Paras 10, 11 and 12 of the judgment, the learned Brother Judges were pleased to hold as under:

"In her evidence in the matrimonial suit the wife as D.W. 1 inter alia says that her husband used to drink heavily and also ill-treated and tortured her in drunken state. She also says that she stayed in her father's house since 6.6.1974 for about eight years and that in December, 1982 she got information from one Mr. Dhall, an Advocate that her husband wanted to meet her and she met her husband accordingly and her husband told her that he would not ill-treat her further and requested her to return and that is why she returned to Bangur Avenue House on 17th December, 1982. She says that she filed the criminal case against the husband in Barrackpore Court for saving her valuables from the hands of her husband and also for turning her husband to good path so that they might be happy together and the said case is still pending there. She denies in her examination-in-chief that on 20th August, 1983 she left her husband's house for ever on the plea of illness. She also denies that she made any false statement against her husband in the criminal case in Barrackpore Court. She says that she is willing to go back to her matrimonial home and live with her husband. It seems to be somewhat unusual that when there are so much allegations and counter allegations between the parties and the wife even filed criminal case against her husband and his mother in Court and also got search warrants issued and articles and ornaments seized at her instance from the houses of her husband and her husband's parents, she could sincerely say that she was still willing to go back to her matrimonial home and to live with her husband. In her examination-in-chief she also produced a photograph saying that the same was the photograph of her husband and another lady whom she did not know. In her evidence before the Matrimonial Court she does not say anything that there was any incident in the night of 21st August, 1983 in which she was threatened by the petitioner-husband to be killed with a knife or that she left the house of the petitioner on the 22nd August, 1983 which were the allegations she made before the Criminal Court. She also does not say anything in her evidence in the matrimonial suit that she approached the petitioner-husband or his parents to take back her ornaments and articles or that they refused to give back her ornaments and articles in spite of approach. D.W. 2, the father of the wife has produced a letter purportingly written on 26-1-1983 by the eldest son of the appellant and the respondent to the son and daughter of the eldest son of D.W. 2 wherein it is inter alia stated by the son writing the letter that his father beat them (children) too much and fight with their "mummy". The admission of this letter in evidence was objected to but in spite of that the same, it seems, was marked as Ext.

C. It is however to be noted that the content of this letter cannot go in evidence because the son who wrote that letter was not examined as a witness. It is needless to mention that neither the petition of complaint filed before the learned Magistrate or the other petitions that might have been filed there nor the evidence, if any, given in the criminal case can be treated as evidence of the facts stated therein, for the purpose of the matrimonial suit. Since the wife has not adduced any convincing evidence in the matrimonial suit that she left the petitioner's house not on the 20th August, 1983 but on the 22nd August, 1983 and there was any incident in the night of 21st August, 1983 as a result of which she was compelled to leave that house next morning or that she approached the husband or his parents thereafter, seeking return of her ornaments and articles which are the allegations she made in petition filed in the Criminal Court, there is no scope of holding, for the purpose of the matrimonial suit, that the filing of the criminal case against the petitioner and her mother on allegations of cheating, criminal breach of trust and criminal misappropriation has been shown to be based on grounds prima facie justifying approach to the Criminal Court. The mere fact that her ornaments or articles were lying with her husband anything more, would not justify her conduct for the purpose of considering the question of cruelty in the matrimonial suit - in straightway running to the Court by filing a criminal case against them. Well, even if it is accepted as a plea of defence for the wife in the matrimonial suit that the Magistrate, on the basis of ex parte evidence adduced by her in the criminal case at the initial stage at least took cognizance of the offence alleged against the husband u/s 420, I.P.C., yet the fact remains that the allegations against the mother of the husband as brought by the wife in respect of offence punishable under Sections 406, 403 and 420, I.P.C. could not be substantiated even prima facie either before the Magistrate or before the Matrimonial Court and consequently as we have discussed earlier, it must be held that making of such unsubstantiated allegations against the mother of the husband in a bid to unduly implicate her in the criminal case constitutes cruelty on the part of the wife not only against her mother-in-law but also against her husband for which the husband can legitimately claim a decree of divorce. The petitioner has in his evidence denied the allegations made by the appellant-wife that the petitioner is a drunkard and is of vicious nature and conduct. He has also stated that the wife left his house on 20-3-1983. As regards the allegations made by the wife in the criminal case, the husband says that such allegations humiliated him and caused mental torture on him. He denied that he takes drinks. He denies that he used to lead a vicious life and also used to come home in drunken condition or that he made any torture on his wife.

11. Having regard to the evidence on record as has been adduced in the matrimonial suit, we endorse, the view of the learned Trial Court that the allegation that the petitioner-husband is a drunkard and leads a vicious life has not been proved in the matrimonial suit by adducing reasonable, cogent and reliable evidence. It is needless to mention that ordinarily hurling of such baseless

allegations regarding the character and conduct of a spouse constitutes cruelty on the part of the other spouse. The fact that the wife also tried to unduly implicate the mother of the husband in the criminal case by making unsubstantiated allegations of offences under Sections 406, 403 and 420, I.P.C. against her also constitutes, as we have already discussed, cruelty on the part of the wife not only against her mother-in-law, but also against her husband. On these grounds of cruelty the husband in our opinion, can legitimately claim for a decree of divorce and that being so we find no reasons to interfere with the decree of divorce granted by the Trial Court.

12. Certain decisions were cited at the Bar, which are noted below. In [Keshaorao Krishnaji Londhe Vs. Nisha Londhe](#), it has been held by a Full Bench of the Bombay High Court that the cruelty contemplated u/s 13(1)(ia) of the Hindu Marriage Act neither attracts the old English doctrine of danger nor the statutory limits embodied in old Section 10(1)(b) of the same Act and that the cruelty contemplated is a conduct of such type that the petitioner cannot reasonably be expected to live with the respondent. In *Ynshoda Bai v. K.B. Katavakar*, AIR 1982 Karn 368 it has been held by a Division Bench of the Karnataka High Court that mere domestic quarrels on account of the presence of the mother-in-law in the family would not constitute mental cruelty and that cruelty must constitute threat of danger to the person or life of the person on whom cruelty is practised and if that element of threat to the life or person is absent, it cannot be the cruelty, much less mental cruelty. We will however, see that the said Karnataka decision about the requirement of the element of threat of danger to the person or life of spouse is not the precise law on the point in view of certain decisions of the Supreme Court which we shall mention latter. In [Neelam Vs. Vinod Kumar Midha](#), the Court was of the view that petty instance of things said or done while spouses are going through period of adjustment should not receive too much importance in accessing the question of cruelty. In [Smt. Gurbachan Kaur Vs. Sardar Swaran Singh](#), the Court was of the view that the wife's allegations of adulterous relationship of the husband with his sister-in-law when considered in the context of the circumstances, did not constitute an act of cruelty entitling the husband to a decree of divorce. In [Sri Tapan Chakraborty Vs. Smt. Anjali Chakraborty](#), a Division Bench of this Court told in the facts and circumstances of that case that the instances referred to by the husband were in the nature of ordinary quarrels between husband and wife and could not be said to be so serious or damaging as to constitute cruelty. In [Krishna Sarbadhikary Vs. Alok Ranjan Sarbadhikary](#), it has been held by a Division Bench of this Court that lodging of complaint of commission of criminal offence against the husband who was a Government official was very likely to cause an apprehension in the mind of the husband that the petitioner-husband, as such cannot be compelled to ensure the company of the wife, who makes false complaints to police on matrimonial differences."

26. Considering the aforesaid ruling and applying the test to the present set of facts, we can definitely say that the evidence of P.W. 1 is corroborated by the father of the petitioner on the point of desertion. It is also not in dispute that the wife filed a criminal case u/s 498-A, IPC against the husband-petitioner. Ultimately the case ended in acquittal. The judgment of the said case is not before us but we can definitely infer that the allegations made by the wife must have been unfounded and unsound footing. Therefore, the husband was acquitted. From the fact that the wife filed a criminal case against the husband-petitioner after the divorce petition is instituted, it must be held that the wife filed an unfounded case as a counter-blast to the divorce petition filed by the petitioner. That itself amounts to cruelty by filing a criminal case. It stands established that she had the support of her parents and brothers. At the time of filing of the complaint, she was residing with her parents. The absence of the wife in the matrimonial home in this case is about 10 years. It amounts to desertion and cruelty.

27. Therefore, we have no hesitation in holding that the learned Judge rightly decreed the O.P. granting divorce to the husband. Hence, the appeal filed by the respondent-wife stands dismissed, confirming the decree of divorce granted by the trial Court. Parties are directed to bear their own costs.