



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 1ST DAY OF APRIL, 2024

PRESENT

THE HON'BLE MRS. JUSTICE ANU SIVARAMAN

AND

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

MISCELLANEOUS FIRST APPEAL NO. 2107 OF 2020 (FC)

BETWEEN:

...APPELLANT

(BY SRI VINAYA KEERTHY M, ADVOCATE)

AND:

...RESPONDENT

(BY SRI ANANDEESHWARA D R, ADVOCATE)

THIS MFA IS FILED UNDER SECTION 19(1) OF FAMILY COURT ACT, AGAINST THE JUDGEMENT AND DECREE DATED 04.01.2020 PASSED IN M.C.NO.141/2019 ON THE FILE OF THE PRINCIPAL JUDGE, FAMILY COURT, TUMAKURU, DISMISSING THE PETITION FILED UNDER SECTION 13(1)(i-a)(i-b) OF THE HINDU MARRIAGE ACT.

THIS APPEAL COMING ON FOR FINAL HEARING THIS DAY, ***ANANT RAMANATH HEGDE J.***, DELIVERED THE FOLLOWING:



**JUDGMENT**

The wife who sought dissolution of her marriage is aggrieved by the dismissal of petition in M.C. No.141/2019 on the file of the Principal Judge, Family Court at Tumakuru. The Family Court in terms of the impugned judgment and decree, rejected the petition seeking dissolution of marriage on the grounds of cruelty and desertion.

2. The parties to the proceeding shall be referred to as per their ranking before the Family Court.

3. The petition would reveal that petitioner and respondent knew each other since 2008. On 31.03.2013, the marriage between the petitioner and the respondent was solemnised. It is further stated that for two years, the marital relationship was cordial. Petitioner completed her post graduation in engineering after the marriage. The respondent was a partner in a partnership firm dealing with granite. It is further stated that three years after the marriage, the respondent started torturing the petitioner and suspected her character and used to check the call details on petitioner's cell phone. It is further stated that the respondent used to



physically assault the petitioner. Petitioner claims that being unable to live with the respondent, she started residing with her grandmother at Bengaluru and it is also alleged that the respondent insisted the petitioner to go for an abortion alleging that she was impregnated by another. It is further stated that after the diagnosis, it was revealed that the petitioner had not conceived. It is also alleged that the respondent once took the petitioner to a secluded place and attempted to take away her life. It is also alleged that once he attempted to hang the petitioner and she was rescued by her mother. The petitioner has further stated that since 2017, she is residing separately from the respondent being unable to live with him.

4. Except the relationship, the respondent has denied every allegation made in the petition. It is further stated that the petitioner is having superiority complex ever since she completed her post graduation in engineering. The respondent alleges that petitioner insisted him to stay with her maternal family and he could not accede to the demand of the petitioner as he had aged parents and his sister to maintain. The respondent has stated that he is ready to stay with the petitioner in his house at Tumakuru. The respondent has



specifically denied the allegation that he suspected the fidelity of the petitioner.

5. Petitioner and respondent have led oral and documentary evidence in support of their claim. The Family Court has dismissed the petition. Aggrieved by the aforementioned judgment and decree, the petitioner/wife is in appeal.

6. Learned counsel for the appellant would urge that the Family Court failed to appreciate the evidence which clearly pointed out to the ill-treatment of the respondent and also the character assassination by the respondent. Learned counsel for the appellant invited the attention of this Court to the evidence in the cross examination of the petitioner where it is suggested that the petitioner is having an affair with her colleague, Pradeep. It is suggested in the cross examination of the petitioner that the petition is filed with an intention to marry the said Pradeep. Learned counsel for the appellant would also urge that the Family Court ignored the police complaint lodged by the petitioner which clearly pointed to the act of cruelty on the part of the respondent.



7. Learned counsel for the respondent would urge that the allegations levelled by the petitioner are seriously disputed by the respondent and the petitioner failed to prove the allegations levelled in the petition. It is also his submission that the materials on record disclosed that the petitioner and respondent lived together till 2018 and that being the position, the Family Court was justified in dismissing the petition filed seeking dissolution of marriage on the ground of cruelty and desertion.

8. This Court has considered the contentions raised at the bar and perused the materials on record.

9. The point for consideration is whether the petitioner has made out a case for grant of divorce on the ground of cruelty and desertion.

10. The relationship is not in dispute. The marriage was solemnised on 31.03.2013. The grievance of the petitioner is that respondent suspected her character which according to her is an act of cruelty. The petitioner in her petition has stated that the respondent has suspected her character and



used to make inquiries with her friends about her movements and used to often look into the call details in petitioner's cell phone. These allegations are no-doubt denied in the statement of objections filed by the respondent.

11. It is elicited in the cross examination of the petitioner that the petitioner worked in Zilla Panchayat, Tumakuru while pursuing her post graduation in engineering and one Mamata was the Chief Executive Officer of the Zilla Panchayat in Tumakuru. On transfer of Mamata to Ramanagara, the petitioner also worked in a project at Ramanagara under said Mamata. It has come in evidence that while the petitioner was commuting between Ramanagara to Tumakuru, the respondent used to drop the petitioner to the Railway Station and used to pick up from the Railway Station on few days. It is also suggested in the cross examination that after the petitioner left the job, she did not live with the respondent. The petitioner states that the respondent made her to resign from the job. What emerges from the said evidence is that the petitioner was working in Ramanagara for considerable time.



12. As already noticed, the petition is filed on the premise that the respondent used to suspect the character of the petitioner. Though this allegation is denied in the written statement, the suggestion in the cross examination nullifies the very defence taken in the written statement denying the allegation of suspicious character made in the petition.

Paragraph 14 of the cross examination reads as under:

14) ನಾನು ರಾಮನಗರದಲ್ಲಿ ಎರಡು ವರ್ಷಗಳ ಕಾಲ ಡಿ.ಸಿ. ಕಛೇರಿಯಲ್ಲಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದಾಗ ಪ್ರದೀಪ್ ಬಿ. ಗೌಡ ಎನ್ನುವವರು ಚುನಾವಣಾ ಶಾಖೆಯಲ್ಲಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದರು ಎಂದರೆ - ಪ್ರದೀಪ್ ಬಿ. ಗೌಡ ಎಂದು ಗೊತ್ತಿಲ್ಲ, ಪ್ರದೀಪ್ ಎನ್ನುವವರು ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದರು. ಸದರಿ ಪ್ರದೀಪ್ ನೊಂದಿಗೆ ನಾನು ಅನೈಯತ್ಯವಾಗಿ ಇದ್ದೆ ಎಂದರೆ - ಕಛೇರಿಯಲ್ಲಿ ಒಟ್ಟಿಗೆ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದುದರಿಂದ ಚೆನ್ನಾಗಿದ್ದೆ. ಸದರಿ ಪ್ರದೀಪ್ ಅವರ ಜೊತೆ ನನಗೆ ಪ್ರೀತಿ ಇದ್ದು, ಆತನನ್ನು ಮದುವೆಯಾಗಬೇಕೆಂಬ ಉದ್ದೇಶದಿಂದ ಎದುರುದಾರನಿಂದ ವಿಚ್ಛೇದನ ಪಡೆಯಲು ಈ ಅರ್ಜಿಯನ್ನು ಸಲ್ಲಿಸಿದ್ದೇನೆ ಎಂದರೆ - ಸುಳ್ಳು.

13. On careful perusal of the aforementioned suggestion, it is evident that the allegation is levelled against the petitioner stating that she is having an affair with one person by name Pradeep and is intending to marry Pradeep after obtaining divorce. It is also forthcoming from the other evidence on record that respondent worked in Ramanagara for two years. Since the petitioner worked in Ramanagara for two years, the suggestion made in the cross examination referred to above assumes significant importance. The suggestion does



not just link the name of a person with the petitioner but also makes an allegation that the petitioner is having an affair with the said person who was working in the same office when the petitioner was working in Ramanagar. And it is also suggested that the petitioner wanted to marry him. The aforementioned evidence in the cross examination would lead to the conclusion that the respondent used to suspect the character of the petitioner stands established. This is what is alleged by the petitioner.

14. Learned counsel for the respondent would submit that the suggestion in the cross examination should not be construed as an allegation made prior to the filing of the petition, as such, it cannot be a ground to hold that the husband inflicted cruelty on the wife.

15. The institution of marriage rests on the mutual trust, confidence, love and respect between the couple. When one spouse makes an allegation suspecting the character of the other and if that allegation is not substantiated, the Court has to hold that the allegation is unfounded. The unfounded allegation on the character of a spouse shakes the edifice of



institution of marriage. In such a situation, it would be extremely difficult for the spouse to live peacefully in matrimony. This being the position, this Court is of the view that the Court has to accept the evidence of the petitioner who has stated that the conduct of the respondent has resulted in mental cruelty. Thus, the petitioner is justified in seeking petition for dissolution of marriage on the ground of cruelty.

16. Though, the petition is also filed on the ground of desertion, this Court finds that the pleading is not sufficient to uphold the plea of desertion though the Court finds some justification in the act of the petitioner being away from the respondent. However for want of proper plea regarding desertion, this Court is of the view that the decree for dissolution of marriage cannot be granted on the ground of desertion.

17. It is also relevant to state that when a petition is filed seeking dissolution of marriage on the grounds of cruelty and desertion, the law does not mandate that both the grounds are to be established to grant the decree for dissolution of



marriage. Even if one of the grounds is established, that would be sufficient to grant a decree for dissolution of marriage.

18. It is also relevant to note that umpteen attempts have been made by the Court to resolve the dispute through mediation. Successive attempts for mediation have failed. Though the respondent who is present before the Court (who also made submission with the consent of the Court in the presence of his counsel) expressed his intention to revive the marital relationship, on a specific query put by the Court, the appellant/wife has stated that it is impossible to live with the respondent. It is also relevant to note that when the question was put to the respondent as to how he would explain the suggestion made to the petitioner in the cross examination where it is suggested that the wife is having an affair with another person, the respondent replied stating that the suggestion in the cross examination is true, nevertheless he is willing to stay with his wife and start marital life afresh.

19. As already noticed, this Court has recorded a finding that the allegation is unfounded and baseless. Apart from that, the allegation is reckless as well as scandalous.



20. Having considered all the materials on record, this Court is of the view that the petitioner is able to establish the ground of cruelty. The Family Court has not considered the aforementioned evidence in proper perspective.

21. Referring to Ex.R.1 - the photograph taken in the year 2018 when the petitioner and respondent together attended a wedding reception, the Family Court held that there is no reason to grant the divorce. Merely because the petitioner and respondent have attended the reception in the year 2018, it does not mean that all is well with the petitioner and respondent. One photograph may not give the clear picture relating to the relationship between the appellant and the respondent.

22. Under these circumstances, this Court is of the view that the judgment and decree of the Family Court have to be set-aside and are accordingly set-aside.

23. The petitioner/wife is also present before the Court has made a statement that she is not making any claim relating



to alimony or any other monetary benefits. Said submission is placed on record.

24. Hence, the following:

ORDER

- (i) The appeal is allowed.
- (ii) The judgment and decree dated 04.01.2020 passed by the Principal Judge, Family Court at Tumakuru in M.C.No.141/2019 are set-aside.
- (iii) The marriage solemnised between the appellant and respondent on 31.03.2013 is dissolved by a decree of divorce.
- (iv) No order as to costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

BRN