



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 3RD DAY OF JULY, 2023

PRESENT

THE HON'BLE MR JUSTICE ALOK ARADHE

AND

THE HON'BLE MR JUSTICE ANANT RAMANATH HEGDE

MISCELLANEOUS FIRST APPEAL NO. 8998 OF 2017 (FC)

BETWEEN:

SRI.K.MURTHY,
S/O KANNAN.E,
AGED ABOUT 44 YEARS,
R/AT NO.103/1, 8TH MAIN,
7TH CROSS, RAMACHANDRAPPA LAYOUT,
KARIYANAPALYA, ST.THOMAS TOWN,
BANGALORE-560 094,
NOW AT: NO.140, E CROSS,
LINGARAJAPURAM, BENGALURU-560 094.

...APPELLANT

(BY SRI JANARDHANA G, ADVOCATE)

AND:

SMT.V.KALAIVANI,
W/O K.MURTHY,
AGED ABOUT 41 YEARS,
RESIDENT OF NO.28, 3RD CROSS,
KADIRAPPA ROAD, DODDIGUNTA,
COX TOWN, BENGALURU-560 005.
NOW CHANGED TO:NO.126, KADIRAPPA ROAD,
6TH CROSS, DODDIGUNTA COX TOWN,
BENGALURU-560 005.

...RESPONDENT

(BY SRI D BHUVANESHWARI, ADVOCATE - ABSENT)

THIS MFA IS FILED U/S 19(1) OF THE FAMILY COURT ACT,
AGAINST THE JUDGMENT AND DECREE DATED 13.10.2017
PASSED IN M.C.NO.805/2012 ON THE FILE OF THE II
ADDITIONAL PRINCIPAL JUDGE, FAMILY COURT, BENGALURU,
DISMISSING THE PETITION FILED U/S 13(i)(a) OF HINDU
MARRIAGE ACT.





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

JUDGMENT

This appeal is filed under Section 19(1) of the Family Courts Act, 1984, challenging the judgment and decree passed in M.C.No.805/2012, on the file of II Additional Principal Judge, Family Court, Bengaluru, wherein the appellant/husband's petition seeking dissolution of marriage under Section 13(i)(a) of the Hindu Marriage Act, 1955 (hereafter referred to as 'the Act'), is dismissed.

2. For the sake of convenience, the parties to the proceedings are referred to as the husband and the wife.

3. The brief facts necessary for the adjudication of the case can be summarised as under:

The marriage between the parties was solemnised on 15.11.2007. The husband has stated that from the marriage they have a daughter by the name Pooja, who was aged 3 ½ years when the petition was filed. It is the case of the husband that the wife used to humiliate him on the pretext that he is dark-skinned. He has further stated that the husband used to



bear insult for the sake of the child and it is further stated that on 29.10.2011, the wife went to Banaswadi Police Station and lodged a complaint against the husband and his family members including his aged mother, for alleged offences under Section 498A of Indian Penal Code. It is further stated that on account of this complaint, the husband was harassed by the Police and he was made to appear in Police Station as well as to the Court for several days. It is further stated that the husband and the family members obtained bail and they are contesting said petition. It is also stated that a case in Criminal Misc. No.259/2011 is filed under Domestic Violence Act. It is further stated that the wife has left the company of the husband and is staying with her parents and child and has not returned to the matrimonial home.

4. It is further alleged that from the date of marriage, the wife was harassing the husband without there being any cause. He has further stated that the wife has treated the husband with cruelty and she is not ready to join the company of the husband and she is not interested in keeping the marriage alive. It is also stated that the wife has complained about the husband before his employer and the employer has called upon the husband seeking an explanation.



5. The husband further states that all these acts of the wife led to mental agony and he went into depression and based on these facts, the husband has sought for dissolution of the marriage on the ground of cruelty from the wife.

6. The wife has contested the petition filed by the husband. She has admitted the relationship and has also admitted the fact that they have a daughter from the wedlock. All other allegations of cruelty are denied by the wife. It is stated by the wife that after the marriage, the wife was staying in her matrimonial home along with the in-laws, sister-in-law and brother-in-law up to March 2011. Thereafter, on 07.04.2011, the couple shifted to a separate residence in Kariyanapalya, St. Thomas Town, Bangalore. It is further stated that the husband's mother, sister-in-law and brother-in-law used to visit the house of the couple every day. It is also alleged by the wife that the husband hardly communicated with her and he used to return late at night and did not allow the wife to go out of the house. It is also alleged by the wife that the husband and his family members used to abuse the wife in foul language and they were demanding dowry from her father. It is further alleged that she was not looked after properly and she was ill-treated.



7. It is also stated by the wife that she was working in a private concern and her earning was given to the husband and the family members. It is further alleged that the husband was not talking to the wife on good terms and she was physically assaulted by the husband. It is also alleged that she was not taken to Doctor whenever she was not feeling well. It is also stated that the wife was not allowed to take the daughter to the hotel and park.

8. It is also alleged by the wife that the husband is having a relationship with a lady by the name Madhumitha and in the statement of objections of the wife it is also alleged that the husband had a relationship with that lady prior to the marriage and the relationship continued even after the marriage. It is further stated that when questioned about that relationship, she was assaulted by her husband. It is further stated that she was not treated well by the husband and his family members. It is also the contention of the wife that the husband has taken custody of the daughter without the consent of the wife and the wife got custody of the child through the intervention of the jurisdictional police. The wife has prayed for dismissal of the



petition on the premise that the husband has not made out a ground for the dissolution of the marriage.

9. Before the Family Court, the husband is examined as P.W.1 and 14 documents are marked at Exs. P1 to P14. The wife is examined as R.W.1 and 32 documents are marked as Exs.R1 to R32.

10. After hearing the parties, the Family Court has dismissed the petition on the ground that the husband has not made out a case for dissolution of marriage on the ground of cruelty. The Family Court has referred to the judgment of the Hon'ble Apex Court in the case **Naveen Kohli vs. Neelu Kohli**, reported in AIR 2006 SC 1675,

wherein it is held that Hindu Marriage Act (25 of 1955), S.13-Divorce-Cruelty-Conduct complained of should be grave and weighty – Not ordinary wear and tear of married life – conduct should be such that no reasonable person would tolerate it”.

11. Aggrieved by the aforementioned judgment and decree, the husband is in appeal.



12. Heard the learned counsel for the appellant and perused the records. None appeared for the respondent. However, the Court has considered the defence and evidence of the respondent before the Family Court.

13. Learned counsel appearing for the appellant submitted that the allegations of cruelty by the wife are duly established by producing evidence before the Family Court and the Family Court has failed to appreciate the same and has erroneously dismissed the petition. The wife in her statement of objections has made false and unfounded allegations stating that the husband is having an illicit relationship with one lady by the name Madhumitha and it is his contention that such an unfounded allegation is nothing but an act of mental cruelty and the Family Court failed to take note of this particular fact and has erroneously dismissed the petition. He would submit that a false complaint is lodged against the husband and against his family members without there being any cause of action to lodge such a complaint and on account of such a complaint the husband and his family members were constrained to visit Police Station and Court every often, which resulted in mental harassment.



14. It is also his contention that the wife has also lodged a complaint before the employer to take disciplinary proceedings against the husband and the husband was called upon to explain with regard to the complaint filed by the wife and this act of the wife also caused immense mental torture to the husband and thereby he has suffered at the hands of his wife.

15. It is further stated that the wife has not made any attempt to join the company of the husband to come back and the evidence on record would establish that she was not interested in the marriage because of the dark complexion of the husband. By referring to these contentions, it is urged that the Family Court ought to have granted a decree for the dissolution of marriage.

16. This Court has considered the contentions raised at the bar. As far as the principle relating to cruelty, it is well-settled that the cruelty need not be physical, it can be even mental cruelty.

17. Hon'ble Apex Court in the case of ***K. Srinivas Rao vs. D.A.Deepa*** reported in ***(2013)5 SCC 226*** has discussed



the issue relating to cruelty in the backdrop of a false and baseless complaint filed against the spouse and the consequential effect of the said frivolous complaint.

18. Hon'ble Apex Court in the case of ***Talreja vs. Kavitha Talreja*** reported in ***(2017) KHC 635***, has held *that the reckless, defamatory and false accusation against her husband, his family members and colleagues which would definitely have the effect of lowering his reputation in the eyes of his peers amounts to cruelty.*

19. This Court keeping in mind the ratio laid down in the aforementioned cases and the evidence placed before this Court, and also the reasons assigned by the Family Court in the impugned judgment and decree has examined the contentions.

20. The fact that the wife has lodged a complaint against the husband is very much admitted in the pleading as well as in the evidence. However, the said case is still pending consideration. This Court is not in a position to give any finding on the correctness or otherwise against the allegations levelled in the said complaint filed by the wife. However, what has to be noticed is that the wife in paragraph 10 of the statement of



objections, levelled against the husband that he is having an illicit relationship with a lady by the name Madhumitha. The wife has also produced a birth certificate, which discloses the name of Madhumitha as the mother and Murthy as the father of the child. By referring to this document, it is urged by the wife before the Family Court that the husband is having an illicit relationship with a lady by the name Madhumitha and from this lady, he has got the child.

21. This Court has perused the evidence in this regard. Even in the cross-examination, it is repeatedly suggested that the husband is having an illicit relationship with one lady by the name Madhumitha. However, there is no acceptable evidence on record to accept the said contention of the wife that the husband is having an illicit relationship with a lady by the name Madhumitha. It is also not forthcoming from any records that the husband is having a child from that lady by the name Madhumitha, as the birth certificate produced does not disclose the name of the child. This being the position, this Court is of the view that allegations levelled against the husband that he is having an illicit relationship with the lady by the name Madhumitha is totally unfounded and baseless as well as



reckless. This allegation made in paragraph No.10 of the statement of objections is serious. If such an allegation is made in the pleading, it can be certainly concluded that the person against whom such allegation is made will be subject to enormous mental cruelty. This fact has not been appreciated by the Family Court at all. Though the husband has not based the petition on the premise that such an allegation is made by the wife prior to the filing of the petition, The statement of objections filed by the wife as well as the cross-examination on behalf of the wife would indicate that the wife raised this issue even prior to the filing of the petition.

22. The wife contends that the husband was having this relationship even before the marriage and that relationship continued even after the marriage. This aspect of the matter is completely overlooked by the Family Court. The Court dismissed the petition on the premise that the normal wear and tear in the family is not a ground for the dissolution of marriage on the ground of cruelty. Family Court has not considered the effect of baseless and reckless allegations relating to the character of the husband.



23. It is also come in evidence that the wife is prosecuting several cases against the husband and his family members and for the last many years, there is no contact between the husband and the wife. When the question has been put to the wife in the cross-examination, whether she is willing to join the company of the husband, the wife though has stated that she is willing to join the company, has stated that she is not willing to withdraw any of the complaints filed against the husband and his family members. This fact would clearly establish that the wife is not willing to join the company of the husband and there is a big rift between the husband and the wife. In the facts and circumstances of the case, the conduct of the wife in not agreeing to withdraw the complaint even if she joins the company of the husband would probabalise the contention of the husband that the wife has ill-treated the husband.

24. The evidence on record, from close scrutiny also leads to the conclusion that the wife used to insult the husband on the premise that he is dark. And for the same reason has moved away from the company of the husband without any cause. And to cover up this aspect, has levelled false allegations



of illicit relationships against the husband. These facts certainly will constitute cruelty.

25. For the reasons assigned, this Court is of the view that the plea of cruelty alleged by the husband is duly established.

26. For the aforementioned reasons, this Court is of the view that the impugned judgment and decree passed by the Family Court have to be set aside and accordingly, they are set aside. Consequently, the petition seeking dissolution of marriage filed by the husband is allowed. Marriage solemnised on 15.11.2007 is dissolved by a decree of divorce.

27. Since no materials are placed relating to assets and liabilities of the parties, this Court has not decided anything on the alimony payable. If any petition is filed seeking maintenance or alimony same shall be considered on its merits without being influenced by this judgment.

28. Hence the following:



ORDER

- (i) The impugned judgment and decree dated 13.10.2017 in M.C.No.805/2012 on the file of the II Additional Family Court at Bengaluru are set aside. Consequently, the petition seeking dissolution of marriage under Section 13(i)(a) of Hindu Marriage Act, 1955 is allowed and the marriage solemnised on 15.11.2007 between the appellant and the respondent is dissolved.
- (ii) No order as to costs.
- (iii) Appeal is ***allowed***.

**Sd/-
JUDGE**

**Sd/-
JUDGE**