



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20TH DAY OF JUNE, 2024

PRESENT

THE HON'BLE MRS JUSTICE K.S.MUDAGAL

AND

THE HON'BLE MR JUSTICE VIJAYKUMAR A. PATIL

MISCELLANEOUS FIRST APPEAL NO. 3208/2015 (MC)

BETWEEN:

M S SHIVAKUMAR S/O B SIDDIAIAH
AGED ABOUT 38 YEARS
RESIDENT OF MALLESHAPURA
KORATAGERE TALUK
TUMAKURU DISTRICT - 572 129

... APPELLANT

(BY SRI A.V.GANGADHARAPPA, ADVOCATE)

AND:

SMT H V PALLAVI
W/O M S SHIVAKUMAR
AGED ABOUT 35 YEARS
RESIDING AT HUTCHAVEERAYANAPALYA
HOLAVANAHALLI HOBLI
KORATAGERE TALUK
TUMKUR DISTRICT - 572 129

... RESPONDENT

(BY SRI.N.JAGADISH BALIGA, ADVOCATE)

THIS MISCELLANEOUS FIRST APPEAL IS FILED UNDER SECTION 28 OF THE HINDU MARRIAGE ACT, PRAYING TO SET ASIDE THE JUDGMENT AND DECREE DATED 23.03.2015 PASSED IN M.C.NO.64/2012 ON THE FILE OF THE ADDITIONAL SENIOR CIVIL JUDGE & JMFC, MADHUGIRI, DISMISSING THE PETITION FILED U/S 13(1A)(ia)(ib) OF HINDU MARRIAGE ACT, 1955.

THIS APPEAL COMING ON FOR FURTHER HEARING, THIS DAY, **K.S.MUDAGAL J.**, DELIVERED THE FOLLOWING:



JUDGMENT

Challenging the dismissal of his petition for divorce, petitioner in M.C.No.64/2012 on the file of the Additional Senior Civil Judge and JMFC at Madhugiri, has preferred this appeal.

2. The appellant was the petitioner and the respondent was respondent in M.C.No.64/2012 before the Trial Court. For the purpose of convenience, the parties are referred to henceforth according to their ranks before the Trial Court.

3. The marriage of the petitioner and the respondent was solemnized on 22.06.2003 at Kannikamahal Choultry, Koratagere according to Hindu customs. The couple were blessed with daughter on 16.08.2005. On 17.07.2012 the petitioner filed M.C.No.64/2012 under Section 13(1A)(ia)(ib) of the Hindu Marriage Act, 1955 (for short 'the Act') seeking decree for dissolution of marriage.

4. Petitioner's case in brief is as follows:

That for six years after the marriage, the respondent did not choose to accompany him to lead marital life. She did not discharge any marital obligation. She used to reside in her parents' house in Hutchaveerayanapalya. She did not



co-operate with him for sexual cohabitation. Whenever he visited her parents' house, respondent and her parents used to be rude and abuse him in foul language. After the petitioner getting employment in Bengaluru, the respondent joined him in Bengaluru and lived with him for two years. Even during that time also, she continued her cruelty of being disrespectful. She used to go to her parents' house frequently without his knowledge or consent. During the said period of two years, she was instigating her relatives to assault him and she was demanding to lead luxurious life causing him financial stress. Since one year prior to the petition, she was residing in her parental house and she was frequently filing false complaint against him, based on which, the police ill-treated him. The respondent was insisting that he should obtain divorce. Due to such acts of the respondent, he is entitled to decree for divorce.

5. Respondent contested the petition denying allegations of desertion and cruelty made against her. Her defence in brief is as follows:

The allegations of desertion and cruelty were denied. At the time of marriage, the petitioner was B.E Graduate, he was



wandering in the village without employment. After the marriage, with support of her parents, he continued his education M-Tech in the year 2006. Her parents born the expenses of his M-Tech education. Till the completion of higher education, he asked her to stay in her parents' house. He used to visit her parents' house during weekly holidays. On some occasions he used to take her to his parental house. During that time, they led happy marital life. After completing M-Tech, the petitioner started working in Sambram Institute of Technology at Bengaluru drawing salary of Rs.45,000/- per month. When the respondent insisted him to set up house for them at his work place, he demanded money to take house on lease. Her parents paid him Rs.1,40,000/- for setting up a house. After he setting up house at T. Dasarahalli, Bengaluru, she went there with daughter-Bhoomika and the daughter was admitted in Vidya Bharathi English School, Bengaluru. She studied for three years i.e., up to 1st standard. After her younger sister's marriage, the petitioner turned hostile and started neglecting her and her child without even providing basic necessities like milk and groceries. Once when she had been to her parental house, on 10.05.2012 without informing her, petitioner vacated the house at T.Dasarahalli. Despite she



calling him on phone, he did not respond. When her father took her to his parental house at Malleshapura and questioned his father about the same, he asked to vacate the house and the petitioner threatened her not to return to his parents' house. Thereafter, he gave complaint before the police on 29.05.2012. In the police station, counseling was held and the petitioner apologized before the Panchayathdars about his conduct and gave a written undertaking dated 31.05.2012 to take the respondent and her child back to his home, but did not comply his undertaking. When he was called by Circle Inspector of Police, on the request of the respondent, the petitioner arrogantly telling that his advocate will answer all the questions, left the police station. Once again, meeting was held in the police station on 18.07.2012 and he undertook to take respondent and her child back. But in the meantime, he filed petition for divorce furnishing false address. Therefore, she alleged that the petitioner himself is guilty of cruelty and negligence and sought dismissal of the petition.

6. To substantiate his case, the petitioner got himself examined as PW.1, his father was examined as PW.3, one T.A Channappa, who said to have participated in the marriage talks



was examined as PW.2. On behalf of the petitioner Exs.P1 to P21 were marked. Respondent was examined as RW1. Her mother was examined as RW.3. One H.V.Umashankar, who said to have participated in the marriage talks, was examined as RW2. On behalf of the respondent Exs.R1 to R23 were marked.

7. Before this Court, respondent's Counsel produced copies of depositions and judgment in Crl.Misc.No.38/2013 on the file of Civil Judge and JMFC, Koratagere and the judgment in Crl.R.P.No.5017/2017 on the file of IV-Additional District and Sessions Judge, Madhugiri. The said proceedings between the parties under Section 125 Cr.P.C and Criminal Revision Petition arising out of the judgment in Crl.Misc.No.38/2013 are not disputed. Therefore, those records are taken on record.

8. The Trial Court on hearing the parties by the impugned judgment and order dismissed the petition holding that the allegations of cruelty and desertion were not proved. The said judgment is questioned by the petitioner in the above case.



Submissions of Sri A.V Gangadharappa, learned Counsel for the appellant:

9. As per respondent herself, after the marriage she did not reside with the petitioner in his parents' house till a house was set up in Bengaluru. She failed to give any justifiable cause for staying in her parents' house for about six years. Therefore, the said acts amount to desertion. The evidence of PWs.1 to 3 show that the petitioner was subjected to cruelty at the hands of the respondent, her parents and he was physically and mentally abused. The findings in CrI.Mis.No.38/2013 and CrI.R.P.No.5017/2017 have no bearing on the matrimonial proceedings as the scope of both of them are different. The Trial Court committed grave error in appreciating the evidence and dismissing the petition. Therefore, the impugned judgment and order are liable to be set aside and petition for divorce shall be allowed.

Submissions of Sri N. Jagadish Baliga, learned Counsel for the respondent:

10. The petition itself was wholly misconceived. The petition is purportedly filed under Section 13(1A)(ia)(ib) of the Act. Section 13(1A) of the Act can be invoked only in the cases



where there is decree for judicial separation and restitution of conjugal rights. It is not the case here. To claim decree on the ground of desertion, the couple should be living separately continuously for two years preceding the petition, whereas the petitioner in the petition itself unequivocally admitted that they are living separately since one year prior to the petition. Therefore petition under Section 13(1A)(ia)(ib) of the Act is not maintainable.

11. So far as allegations of cruelty, he submits that firstly they were not proved. Secondly, in the petition as well as in his deposition the petitioner admitted that after the alleged desertion and cruelty during the first six years, the couple lived together from 2009 to 2011 in Bengaluru, which amounts to condonation of cruelty and desertion under Section 23(1)(b) of the Act. Therefore, the cruelty, if any, subsequent to that should have been established. The evidence on record shows that the petitioner himself apologized and undertook to take care of his wife and child, which goes to show that he himself was guilty of cruelty and negligence. Coupled with that, a clear finding was recorded against him in Crl.Mis.No.38/2013 that he failed and neglected to take care of his wife and child. That was



confirmed by the District and Sessions Judge in Crl.R.P.No.5017/2017 and only the quantum of maintenance was reduced. Those findings have attained finality. The petition and the present appeal are apparently vexatious and liable to be dismissed.

12. On considering the submissions of both sides and on examining the material on records, the question that arises for consideration is ***"whether the impugned judgment and order of dismissal of the petition of the appellant for dissolution of marriage suffers any illegality or perversity?"***

Analysis:

13. There is no dispute that the marriage of the petitioner and the respondent was solemnized on 22.06.2003 and on 16.08.2005 couple were blessed with a daughter. The petitioner did not dispute that at the time of marriage, he had completed B.E degree and he joined M-Tech in the year 2006. According to the respondent, till he joining M-Tech course, the petitioner was unemployed. But the petitioner claimed that he was working in some garage and service centre. However, no evidence was led to prove such employment. It was also not disputed that, after he completing his M-Tech degree he was



employed as Lecturer in Sambram Institute of Technology, M.S Palya, Bengaluru. This is also evident from Ex.R3, his statement before police. Petitioner also does not dispute that he filed complaint as per Ex.R1 before Koratagere police admitting that himself and the respondent lived together for three years in Bengaluru. But he claimed that she has left the house about three months prior to 29.05.2012 (Ex.R1) for naming ceremony of her sister's child and did not return.

14. As rightly pointed out by the learned Counsel for the respondent, petition under Section 13(1A) was totally misconceived. The ground for decree of divorce under Section 13(1A) is available only in cases where there is decree for judicial separation or decree for restitution of conjugal rights and thereafter there is no re-union between the parties. Even according to the petitioner, that was not the case here. Therefore, dismissal of petition on that count is wholly justifiable.

15. So far as cruelty and desertion, the petitioner claimed that after six years of marriage, the respondent frequently ill-treated him and his parents, abused them in foul language and not co-operating with him in the conjugal life



including physical proximity and ultimately she left him without his knowledge or consent. Whereas the respondent claimed that as the petitioner himself had no employment and thereafter when he was pursuing education he had asked her to stay in her parents' house, but she was going to his parents' house also whenever he was visiting his parents' house. She also contended that the petitioner himself was visiting her either in his parents' house or in her parents' house during weekends and holidays and they led the marital life.

16. For six years petitioner or his parents have not raised any complaint of desertion or cruelty and did not seek any legal remedy in that regard. Moreover, during that time a daughter was born on 16.08.2005. Further the respondent did not dispute for having filed complaint as per Ex.R1 and statement/undertaking as per Ex.R3 before Koratagere police. Petitioner himself made a statement that wife lived in her parental house for six years. Thereafter for three years they lived together in Bengaluru. Even assuming that during six years there was any desertion or cruelty, petitioner living with her for three years thereafter in Bengaluru, amounts to condonation of alleged earlier cruelty or desertion on her part.



Therefore, Section 23(1)(b) of the Act bars him from seeking such relief and no decree for divorce on the ground of the alleged cruelty or desertion for earlier six years can be granted.

17. The petitioner becomes entitled to a decree for divorce only if he proves the desertion or cruelty for subsequent period of three years i.e., 2009 to 2012. But in the complaint Ex.R1, the respondent claims that they lived together till May 2012 in Bengaluru and he abruptly vacated the house to prevent her entry into the house or her stay with him. In the complaint in Ex.R1 the petitioner himself states that three years prior to the date of the said complaint i.e., 29.05.2012, himself and the respondent lived together. He says that his wife left the house about three months prior to the complaint i.e., 26th February, 2012 in the guise of attending to her sister's child's naming ceremony and did not return. At the instigation of her parents, she declined to accompany him, but on 27.05.2012 herself and her parents went to his parental house and threatened them. Under the said complaint, he sought protection from his wife/respondent, requested the police to summon the respondent and her parents to the police station and provide him protection from them.



18. Ex.R3 is the statement given by the petitioner himself. Complaint/Ex.R1 is filed by the petitioner. In that he says that his parents-in-law dropped his wife on 27.05.2012 in his house at Malleshapura, at that time there was some altercation between him and his wife. Ex.R3 shows that thereafter there was a panchayat to sort-out the issues. In that panchayat he executed Ex.R3 undertaking that they live cordially as advised by the panchayathdars and he sets up the house after 15 days and takes his wife back. If these two admitted documents are read together, they show that the couple separated from 26.02.2012 i.e., because of he vacating the house. It was the respondent who attempted to rejoin and that was obstructed. Again, he himself gave undertaking that he will take his wife back after setting up the house within 15 days i.e., on 31.05.2012. Without doing that within two months i.e., on 17.07.2012 he has filed the petition for divorce on the ground of desertion and cruelty.

19. In Ex.R1 and R3 there were no allegations of the respondent abusing him in foul language or she not co-operating with him for leading conjugal life, which were made in the petition. By those documents themselves the



allegations of cruelty or desertion subsequent to 2009 were falsified. To crown all those, he has suffered the findings in Crl.Mis.No.38/2013 that he has willfully failed and neglected to maintain his wife and daughter. Respondent and her daughter filed Crl.Mis.No.38/2013 against the petitioner before the Civil Judge and JMFC, Koratagere alleging that initially due to his financial stress and subsequently due to his higher education, he did not set up house and even after getting the employment, he failed and neglected to maintain them, ultimately, he has vacated the house to drive them out. On contest, the said Court recorded the findings that the petitioner having sufficient means, failed and neglected to maintain the respondent and their child who are unable to maintain themselves.

20. The learned Magistrate awarded maintenance of Rs.8,000/- each to the respondent and their child. Though the petitioner challenged the said judgment in Crl.R.P.No.5017/2017, the reading of para 17 of the judgment dated 12.07.2018 shows that the petitioner herein restricted his challenge only to the quantum of maintenance awarded and not regarding the findings of failure and negligence to maintain



the wife and child. In that case confirming the said finding, the Revisional Court only reduced the maintenance from Rs.8,000/- to 6,000/- payable to the wife and Rs.4,000 payable to the child. That order also attained finality. Those findings are recorded by the Court of competent jurisdiction and bind the parties. There is no merit in the contention that the scope of those proceedings are different and therefore they do not operate against the petitioner.

21. Having regard to the materials and evidence on record, the trial Court was justified in holding that the petitioner has failed to prove cruelty and desertion alleged by him. There is no illegality or perversity in the impugned judgment and the same does not warrant interference of this Court. Hence the following:

ORDER

The appeal is dismissed with costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

PKN List No.: 1 SI No.: 11