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K. SRINIVAS

v.

K. SUNITA

(Civil Appeal No. 1213 of 2006)

B

NOVEMBER 19, 2014

[VIKRAMAJIT SEN AND PRAFULLA C. PANT, JJ.]

Hindu Marriage Act, 1955:

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s.13(1)(ia) – Divorce on ground of cruelty – Filing of false criminal complaint by wife against husband and other family members of husband amounts to cruelty – The husband can claim dissolution of marriage even when one such complaint is made.

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Allowing the appeal, the Court

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HELD: 1. Irretrievable breakdown of marriage as a ground for divorce has not found statutory acceptance till date. Under Article 142 of the Constitution, the Supreme Court has plenary powers “to pass such decree or make such order as is necessary for doing complete justice in any case or order pending before it”.

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This power, however, has not been bestowed by our Constitution on any other Court. The Law Commission of India in its Reports in 1978 as well as in 2009 has recommended the introduction of irretrievable breakdown of marriage as a ground for dissolution of marriage; the Marriage Laws (Amendment) Bill of 2013 incorporating the ground has even received the assent of the Rajya Sabha.

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It is, however, highly debatable whether, in the Indian situation, where there is rampant oppression of women, such a ground would at all be expedient. But that controversy will be considered by the Lok Sabha. [Para 3] [301-G-H; 302-A-C]

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2. The respondent-wife has admitted in her cross-examination that she did not mention all the incidents on which her complaint is predicated, in her statement under Section 161 of the Cr.P.C. It was not her case that she had actually narrated all these facts to the Investigating Officer, but that he had neglected to mention them. This clearly indicated that the criminal complaint was a contrived afterthought. The view of the High Court that the criminal complaint was "ill advised" is affirmed. Adding thereto is the factor that the High Court had been informed of the acquittal of the appellant-husband and members of his family. In these circumstances, the High Court ought to have concluded that the respondent-wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 13(1)(ia) of the Hindu Marriage Act. The respondent-wife had filed a false criminal complaint, and even one such complaint is sufficient to constitute matrimonial cruelty. The marriage of the parties is dissolved under Section 13(1) (ia) of the Act. [Paras 5, 7 and 8] [303-B-E; 304-A-B]

K. Srinivas Rao vs. D.A. Deepa 2013 (5) SCC 226 – relied on.

Case Law Reference:

2013(5) SCC 226 relied on Para 1

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1213 of 2006.

From the Judgment & Order dated 7.11.2005 of the High Court of Judicature, Andhra Pradesh at Hyderabad in C.M.A. Nos. 605 and 673 of 2000.

A D. Rama Krishna Reddy, D. Bharathi Reddy for the Appellant.

Yashvardhan, Piyush Singh, S.K. Sabharwal for the Respondent.

B The Judgment of the Court was delivered by

C **VIKRAMAJIT SEN, J. 1.** In this Appeal, counsel for the Appellant has sought to draw our attention to all the arguments that had been addressed before the High Court on behalf of the Appellant-Husband in support of his claim for dissolution of his marriage to the Respondent by a decree of divorce under Section 13(1)(ia) of the Hindu Marriage Act, 1955. We have, however, restricted him to the ground of alleged cruelty on account of the filing of a criminal complaint by the Respondent against the Appellant and several members of his family under Sections 498A and 307 of the Indian Penal Code (IPC). We did this for the reason that if this ground is successfully substantiated by the Petitioner, we need not delve any further i.e. whether a marriage can be dissolved by the Trial Court or the High Court on the premise that the marriage has irretrievably broken down. This nature of cruelty, in the wake of filing of a false criminal case by either of the spouses, has been agitated frequently before this Court, and has been discussed so comprehensively and thoroughly that yet another Judgment on this well-settled question of law, would be merely a waste of time. A complete discourse and analysis on this issue is available in a well-reasoned judgment in **K. Srinivas Rao vs. D.A. Deepa**, 2013(5) SCC 226, in which numerous decisions have been cited and discussed. It is now beyond cavil that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce.

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2. The marriage of the parties was celebrated according to Hindu rites at Hyderabad on 11th February, 1989. A male child was born to the parties on 8th May, 1991, after which the Respondent-Wife, as per her pleadings, started suffering from Sheehan's syndrome. On the night of 29th/30th June, 1995, the Respondent left the matrimonial house and ever since then she has been living with her brother, who is a senior IAS officer. On 14th July, 1995, the Appellant filed an original petition praying for divorce on the ground of cruelty as well as of the irretrievable breakdown of their marriage. The Respondent-Wife retorted by filing a criminal complaint against the Appellant as well as seven members of his family for offences under Section 307 read with Sections 34, 148A, 384, 324 of the IPC, and Sections 4 and 6 of the Dowry Prohibition Act, 1961. It is pursuant to this complaint that the Appellant-Husband and seven of his family members were arrested and incarcerated. The Respondent-Wife also filed a petition under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. On 30th June, 2000, the Learned Vth Additional Metropolitan Sessions Judge, Mahila Court, Hyderabad, acquitted the Appellant and his family members, and this Order has attained finality. Meanwhile, by its Judgment dated 30th December, 1999, the Family Court at Hyderabad, granted a divorce to the Appellant on the ground of cruelty as also irretrievable breakdown of marriage; it rejected the Respondent's petition under Section 9 of the Hindu Marriage Act. The Respondent-Wife successfully appealed against the said Judgment in the High Court, and it is this Order dated 7th November, 2005 that is impugned before us.

3. Irretrievable breakdown of marriage as a ground for divorce has not found statutory acceptance till date. Under Article 142 of the Constitution, the Supreme Court has plenary powers "to pass such decree or make such order as is necessary for doing complete justice in any case or order pending before it". This power, however, has not been bestowed by our Constitution on any other Court. It is for these

A reasons that we have confined arguments only to the aspect
of whether the filing of a false criminal complaint sufficiently
proves matrimonial cruelty as would entitle the injured party to
claim dissolution of marriage. It will be relevant to mention that
the Law Commission of India in its Reports in 1978 as well as
B in 2009 has recommended the introduction of irretrievable
breakdown of marriage as a ground for dissolution of marriage;
the Marriage Laws (Amendment) Bill of 2013 incorporating the
ground has even received the assent of the Rajya Sabha. It is,
however, highly debatable whether, in the Indian situation, where
C there is rampant oppression of women, such a ground would
at all be expedient. But that controversy will be considered by
the Lok Sabha.

4. In the case in hand, learned counsel for the Respondent-
Wife has vehemently contended that it is not possible to label
D the wife's criminal complaint detailed above as a false or a
vindictive action. In other words, the acquittal of the Appellant
and his family members in the criminal complaint does not by
itself, automatically and justifiably, lead to the conclusion that
the complaint was false; that only one complaint was preferred
E by the Respondent-Wife, whereas, in contradistinction, in
K.Srinivas Rao a series of complaints by the wife had been
preferred. The argument was premised on the averment that
the investigation may have been faulty or the prosecution may
have been so careless as to lead to the acquittal, but the
F acquittal would not always indicate that the Complainant had
intentionally filed a false case. What should be kept in
perspective, it is reasonably argued, that the Complainant is
not the controlling conductor in this Orchestra, but only one of
the musicians who must deliver her rendition as and when and
G how she is called upon to do. Secondly, according to the
learned counsel, the position would have been appreciably
different if a specific finding regarding the falsity of the criminal
complaint was returned, or if the Complainant or a witness on
her behalf had committed perjury or had recorded a
H contradictory or incredible testimony. Learned counsel for the

Respondent-Wife states that neither possibility has manifested itself here and, therefore, it would be unfair to the Respondent-Wife to conclude that she had exhibited such cruelty towards the Appellant and her in-laws that would justify the dissolution of her marriage.

5. The Respondent-Wife has admitted in her cross-examination that she did not mention all the incidents on which her Complaint is predicated, in her statement under Section 161 of the Cr.P.C. It is not her case that she had actually narrated all these facts to the Investigating Officer, but that he had neglected to mention them. This, it seems to us, is clearly indicative of the fact that the criminal complaint was a contrived afterthought. We affirm the view of the High Court that the criminal complaint was "ill advised". Adding thereto is the factor that the High Court had been informed of the acquittal of the Appellant-Husband and members of his family. In these circumstances, the High Court ought to have concluded that the Respondent-Wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the Appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 13(1)(ia) of the Hindu Marriage Act.

6. Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was lead, as also when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.

A 7. In these circumstances, we find that the Appeal is well founded and deserves to be allowed. We unequivocally find that the Respondent-Wife had filed a false criminal complaint, and even one such complaint is sufficient to constitute matrimonial cruelty.

B 8. We, accordingly, dissolve the marriage of the parties under Section 13(1)(ia) of the Hindu Marriage Act. The parties shall bear their respective costs.

Devika Gujral

Appeal allowed.