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APHC010524892006



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI**

TUESDAY, THE 20th DAY OF AUGUST 2026

PRESENT

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

FAMILY COURT APPEAL No: 123 OF 2006

Between:

N.Markandeya Sasthri, S/o late N.Venkata Sivaiah
Telephone Supervisor at Telephohone Exchange,
N.Markandeya Sasthri Telephone Supervisor,
Telephohone Exchange,

...Petitioner

AND

Smt N Balatripura Sundari, W/o N.Markandeya Sasthri
C/o D.S.R.Anjaneyulu, 4-5-4, Old Town,
Behind Anjaneyaswami Temple,

...Respondent

Counsel for the Petitioner: MURALI LINCOLN

Counsel for the Respondent

The Court made the following order:

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

FAMILY COURT APPEAL No: 123 OF 2006

JUDGMENT: (Per Hon'ble Smt Justice Sunitha Gandham)

Assailing the order and decree dated 14.08.2006 passed by the learned Judge, Family Court, Kurnool in O.P. No.69 of 2003 filed under Section 13 (1) (ia) & (ib) of the Hindu Marriage Act, 1955 (herein after referred to as 'The Act, 1955') whereunder dismissed the petition filed by the appellant seeking dissolution of his marriage with the respondent dated 02.09.1999, appellant filed this instant Family Court Appeal.

2. The parties are being referred to as per their positions before the trial Court, for the sake of convenience and clarity.

3. The case of the petitioner is thus:

a) That the marriage of the petitioner and respondent was solemnised on 02.09.1999 as per Hindu rites and caste customs at Srisailam. The petitioner belongs to an orthodox family. He has been living with his old age mother and elder brother at Kurnool. Initially, the petitioner was not willing to marry the respondent but at the instance of one Ranga Rao, he agreed to marry the respondent as she had accepted to follow their customs and look after the welfare of his mother. After marriage, the respondent joined the petitioner to lead marital life. Respondent's behaviour with the petitioner and his aged mother and brother was highly provocative and quarrelsome and she started finding faults with the orthodoxy customs and habits. She hardly stayed there for seven days and thereafter, left the matrimonial house and again, came back at the end of October, 1999. Even after her return, she did not mend her attitude and openly expressed her unwillingness to serve her aged mother in law. Petitioner advised the respondent to be polite and affectionate towards his mother but she failed to do so. After 15 days, again respondent left the

matrimonial house and during that short period also, behaviour of the respondent was disrespectful and cruel towards the petitioner and his mother. In the month of March, 2000, respondent joined him and at that time also, she did not change or mend her attitude and used to pick up quarrels with the petitioner and his mother and her conduct towards them continued to be egoistic and provocative and she declared that she has no interest to lead marital life. Finally, on 08.05.2000, respondent left the matrimonial house without informing to him.

b) Petitioner made attempts through the elders namely 1) Sri G.Krishna Sasthri of Nandyal, 2) Sri N.Chandramouli of Nandyal 3) Sri G.S.N.Sarma and 4) Sri G.Venkateswarlu of Kurnool to take back the respondent, but in vain. Because of the cruel attitude of the respondent towards the mother of petitioner, she died on 05.02.2002. Respondent deserted the petitioner without any justifiable cause and since then, they have been living separately. Hence, the petition.

c) Respondent filed counter admitting her marriage with the petitioner and denying the other averments made in the petition, wherein, *interalia* contended as follows:

The petitioner demanded dowry of Rs.2 lakh and at the request of her brother, he accepted to marry this respondent by taking dowry of Rs.1 lakh and immediately, after the marriage, she joined the petitioner and served them without any remarks at any point of time. Brother of the petitioner and his wife used to find fault with the respondent and they are the root cause for the disputes among the family. Her mother-in-law used to praise this respondent for her services. Respondent also hailed from orthodox family. The petitioner alleges that the respondent did not know anything about the customs of brahmin family, and the allegation that she used to harass them and stayed only short period of time is false. She never left the matrimonial house. No mediation was done by the elders and she never utters any word or showed

her unwillingness to join the society of the petitioner. The letters written by the petitioner to this respondent's brother disclosed the mentality and attitude of the petitioner towards this respondent. Till the death of his mother, the petitioner allowed the respondent to serve his mother and thereafter, the petitioner felt that this respondent became burden to him and as such, he neglected to see her welfare alleging attributions, and with other formal denials prayed to dismiss the petition.

4. During enquiry, the petitioner himself examined as PW1 and he has got examined independent witness as PW.2, and filed Ex.A1/Certified copy of affidavit and Ex.A2/Order of High Court of Andhra Pradesh in Tr.C.M.P. No.57 of 2005 dated 21.02.2005 and as against the said evidence, respondent herself examined as RW.1, she has got examined independent witnesses as RW.2, and RW3 and no documents are filed. At the culmination of enquiry, the trial Court dismissed the petition rejecting the grounds urged by the petitioner and feeling aggrieved by the said order dated 14.08.2006, petitioner preferred this instant appeal with the following grounds:

- i) The order of the trial Court is contrary to law, weight of evidence and probabilities of the case.
- ii) The trial Court ought to have seen deliberate misbehaviour of the respondent which lead to mental cruelty.
- iii) The trial Court ought to have seen that the record clearly established the fact that the mother of the petitioner suffered due to arrogance and disrespectful behaviour of the respondent.
- iv) The trial Court failed to appreciate the evidence and facts in proper perspective.
- v) The trial Court ought to have seen that the marriage between the petitioner and respondent has become irretrievably broken down.

vi) The trial Court failed to appreciate the aspect of cruelty done by the respondent, and with other formal grounds, prayed to allow the appeal.

5. Heard Sri M.Murali Lincoln, learned counsel for the revision petitioner. Since there is no representation on behalf of the respondent, arguments of the respondent are closed.

6. On hearing the learned counsel for the petitioner and upon perusing the record including the order and decree dated 14.08.2006, the points that would arise for consideration are:

- i) **Whether the petitioner established his case to grant divorce by dissolving his marriage dated 02.09.1999 with the respondent?**
- ii) **Whether the order and decree dated 14.08.2006 passed by the Judge, Family Court, Kurnool are sustainable in facts and law?**
- iii) **To what relief?**

7. Point No.1:

a) It is not in dispute that the petitioner and respondent are wife and husband and their marriage was solemnised on 02.09.1999 as per Hindu rites and caste customs at Srisailam and out of their lawful wedlock, they do not have children, and since 2000, they have been living separately.

b) To prove their respective contentions, petitioner and respondent filed their examination in chief affidavits in lieu of their chief examinations by restating the averments mentioned in the petition and counter. The grounds raised by the petitioner seeking dissolution of marriage are desertion and cruelty.

c) Before delving into the facts and evidence of the case, it is apposite to refer the provision of law which deals with dissolution of marriage. As per Section 13 (1) (ia) and (ib) of the Hindu Marriage Act, any marriage solemnized, whether before or after the commencement of this Act, may, on a

petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party, has, after the solemnization of the marriage, treated the petitioner with cruelty; or has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or.

d) The word 'cruelty' has not been defined under the Act. It is established principle of law that cruelty may be either physical or mental abuse that makes living together impossible. Actual physical violence, bodily harm, or actions that put life and limb in danger represents physical violence and mental cruelty may be severe emotional pain, constant insults, false legal charges, distress etc., and to show desertion, petitioner has to prove that the respondent left him for a continuous period of at least two years right before filing the case, without any valid reason and consent.

e) Now, it is to be seen that whether the petitioner established his case to answer the point in the affirmative by dissolving the marriage dated 02.09.1999 with the respondent. It came in the evidence of the petitioner, immediately after marriage, the respondent did not accept for cohabitation and subsequently, their marriage was consummated, respondent did not look after the welfare of his mother, became rude and arrogant, committed the acts of cruelty and without informing to him, she left the matrimonial house on two occasions and finally, on 08.05.2000, she left the matrimonial house and though he tried to take back the respondent through elders namely Sri G.S.N.Sarma/ PW.2 and 2 others, she failed to join him and finally, in the month of March, 2000, respondent deserted him and since then, they have been living separately.

f) In this regard, it is to be noted that at the time of marriage, petitioner was aged about 50 years and respondent was aged about 40 years and their marriage was solemnised in the year 1999. This petition is filed in the year 2003 and since it was dismissed vide order dated 14.08.2006, petitioner

preferred this instant appeal in the year 2006. The present ages of the petitioner and respondent are approximately 76 and 66 years respectively. Both are claiming that they belong to Orthodox family and as per the version of the petitioner, respondent not followed their customs and failed to look after the welfare of his mother. Admittedly, mother of the petitioner died in the year 2002 and it is not the version of the petitioner that after death of his mother, he tried to take back the respondent to continue their marital tie and on the other hand as per the version of the respondent, she never neglected the petitioner, the root cause for the disputes among the family members is involvement of the petitioner's brother and his wife and having necked her out from the matrimonial house, petitioner never sent any mediator to take her back and though she tried to join the petitioner, he refused to take back her.

g) During enquiry also, respondent agreed to join the petitioner and even then also, petitioner refused to take her back and the reason offered by the petitioner is that the respondent never took care of his mother and when learned counsel for the respondent posed a question that since his mother died long back why can't he take back his wife, he replied that he has his own apprehension that the respondent would kill him.

h) PW.2 testified that respondent could not adjust with Orthodoxy habits and customs. So, record reveals that the main allegation of the petitioner is that the respondent failed to follow their orthodoxy habits and customs of his mother. It came in the evidence of RWs.2 and 3 that the petitioner has peculiar mentality and used to harass the respondent on the ground of orthodoxy customs and habits. Record reveals that even after death of his mother, respondent joined the petitioner and lead martial life till September, 2003 and as per the version of the respondent, thereafter, petitioner necked her out from the matrimonial house and deserted her and since there is no option to the respondent, she has been staying along with her brother at Narasaraopet.

i) As per the version of the respondent, she also hails from the respectable and orthodox family and used to follow directions of her mother in law. As per the version of respondent No.3 who is family friend of RW.2, on two occasions he tried to settle the matter, went to Kurnool and requested the petitioner to take back the respondent, but in vain.

j) In ***Samar Ghosh vs Jaya Ghosh***¹, Hon'ble Apex Court held that the married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty and the ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

k). As per the respondent, she also hails from orthodox family and know the customs and habits and she had followed the same and as such, the allegation of the petitioner that the respondent does not wear wet saree to follow 'madi' cannot be taken into consideration. Generally, a wife choosing not to follow traditional or orthodox customs does not legally constitute cruelty. Personal freedom, individual choice, and differing personal beliefs regarding religious or cultural rituals are normal. They do not cross the legal threshold of mental or physical cruelty required to dissolve a marriage. Legal cruelty means behavior that is so severe and harmful that the other spouse cannot reasonably be expected to live with them. Not practicing a ritual is not a deliberate act to harm or torture a spouse and simply refusing a custom is not cruelty, however, if refusal turns into active public humiliation, continuous insults, or targeted malicious behavior towards the family, then the courts can evaluate the overall conduct. Record does not reveal any societal humiliations and continuous insults.

¹ (2007) 4 SCC 511

l). All the factors on a cumulative consideration suggest that the self serving statements of petitioner do not inspire the confidence and the same appears to be far away from the truth, and in the light of the significant probabilities showed on behalf of the respondent, case of the petitioner pales into insignificance. So, it can safely be held that the petitioner failed to establish his case. Hence, the point No.1 is answered in the negative and against the petitioner.

8. Point No.2:

This court has gone through the order of the trial court and for the reasons assigned by this court and upon re-appraisal of the facts and evidence, this Court gave finding in point No.1 against the petitioner. The trial court has given justifiable reasons and as such, order and decree passed by the trial court are sustainable in facts and law and no interference is required by this court. Hence, this point is answered accordingly.

9. Point No.3:

In the result, and in view of the findings in Point Nos.1 and 2, this appeal is dismissed, confirming the decree and order dated 14.08.2006 made in O.P. No.69 of 2003 by the learned Judge, Family Court, Kurnool. There are no order as to costs.

As a sequel thereto, pending miscellaneous petitions, if any, shall stand closed.

JUSTICE BATTU DEVANAND

JUSTICE SUNITHA GANDHAM

20.08.2026
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