

**THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE T. AMARNATH GOUD**

F.C.A. NO.54 OF 2006

JUDGMENT: (Per Hon'ble Sri Justice Raghvendra Singh Chauhan)

The appellant, Smt. Sirangi Srilatha, has challenged the legality of the judgment and decree, in O.P. No.96 of 2002, dated 20.12.2005, passed by the Family Court, Warangal, whereby the learned judge has granted divorce in favour of the respondent-husband on the ground of cruelty and desertion.

Briefly, the facts of the case are that the appellant-wife and the respondent-husband were married on 08.11.1992 at Ramalingeshwara Swamy Temple, Warangal in accordance with the Hindu rites and customs. During their wedlock, they were blessed with Sai Chaitanya, and Siragani Randeer. However, after the birth of Randeer, the wife started harassing the husband with cruelty for silly reasons. She filed a case under Section 498-A IPC against the husband, and his family members. Even during the pendency of the criminal trial, the respondent-husband tried his level best to settle the dispute with the wife, but his attempts failed. The appellant-wife deserted the respondent-husband in August, 2000. According to the respondent-husband, the appellant-wife has been living away from him without any rhyme or reason. Hence, the divorce petition was filed on the ground of cruelty and desertion.

In order to buttress his case, the respondent-husband examined two witnesses, and submitted three documents. In turn, the appellant-wife examined three witnesses, but did not submit any documents. After hearing both parties, by the impugned judgment and decree dated 20.12.2005, the learned Family Court granted the divorce in favour of the respondent-husband. Hence, this appeal before this Court.

Mr. Balla Raindranath, the learned Counsel for the appellant has raised the following contentions before this Court.

Firstly, despite the orders of the Family court directing the respondent-husband to pay maintenance both to the appellant-wife and to the two children, he is refusing to do so. Thus, according to the learned counsel, the cruelty has not been inflicted by the wife upon the husband, but the *vice-versa*.

Secondly, since the appellant-wife had claimed in her testimony that it is she who has been subjected to cruelty, she had given cogent reasons for staying away from the husband. Therefore, the intention to desert the company of the husband is conspicuously missing. Hence, the learned Family Court is not justified in granting the decree of divorce in favour of the respondent-husband.

On the other hand, the learned counsel for the respondent-husband pleads that the case filed by the wife for offence under Section 498-A IPC has ended in acquittal of the respondent-husband. Since the wife had filed a false and frivolous case of dowry demand, this act by itself tantamounts to cruelty being

inflicted by the wife upon the husband. Therefore, the learned trial Court was justified in granting the divorce in favour of the respondent-husband.

Secondly, even if the respondent-husband is not maintaining the wife as directed by the Family Court, the appellant has sufficient alternate remedies for ensuring that the maintenance is duly paid to her.

Heard the learned Counsel for the parties and perused the impugned order.

Admittedly, the appellant-wife had filed a criminal case for offence under Section 498-A IPC. She had alleged that her husband and her in-laws family were demanding Rs.5,00,000/- as additional dowry. However, as the case has ended in acquittal, obviously she could not establish the said allegation.

In the case of **A. Jayachandra v. Anil Kaur**¹, the Hon'ble Supreme Court has already opined that a false allegation of dowry demand and frivolous case for offence under Section 498-A IPC itself tantamounts to cruelty being inflicted by the wife upon the husband. Therefore, the learned Family Court was certainly justified in granting the divorce on the ground of cruelty.

Although the appellant-wife had claimed to have been subjected to physical and mental cruelty, she could not establish the same before the learned Family Court. Hence, the appellant-wife is unjustified in claiming that she had valid reasons for

¹ AIR 2005 SC 534

leaving the company of the husband. Therefore, desertion is equally established in the present case. Hence, the learned Family Court was justified in granting divorce on the ground of desertion, as well.

Even if the respondent-husband is not paying maintenance to the appellant-wife, as directed by the learned Family Court, the appellant has sufficient legal remedies for ensuring that the maintenance amount is duly paid to her.

For the reasons stated above, this Court does not find any merit in the present appeal; it is, hereby, dismissed. No costs.

The miscellaneous petitions pending, if any, shall stand closed.

RAGHVENDRA SINGH CHAUHAN, J

T. AMARNATH GOUD, J

Date: 11.02.2019

MRKR