

**HON'BLE SRI JUSTICE ASHUTOSH MOHUNTA  
AND  
HON'BLE SRI JUSTICE G.KRISHNA MOHAN REDDY  
F.C.A.Nos.7 and 47 of 2010**

**Date: 19-10-2012**

**F.C.A.No.7 of 2010:**

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Between:

Smt. Guntamukkala Naga Venkata Kanaka Durga

... Appellant

and

Guntamukkala Eswar Sudhakar and another

... Respondents

**HON'BLE SRI JUSTICE ASHUTOSH MOHUNTA  
AND  
HON'BLE SRI JUSTICE G.KRISHNA MOHAN REDDY  
F.C.A.Nos.7 and 47 of 2010**

**COMMON JUDGMENT:** (per Hon'ble Sri Justice G.Krishna Mohan Reddy)

These appeals have arisen out of common order dated 28-05-2009 passed in O.P.Nos.435 of 2006 and 391 of 2008 on the file of Judge, Family Court-cum-IV Additional District Court at Vijayawada.

2. The appellant (wife) in F.C.A.Nos.7 and 47 of 2010 is the petitioner in O.P.No.435 of 2006 and respondent in O.P.No.391 of 2008. On the other hand the first respondent (husband) in F.C.A.No.7 of 2010 who is the sole respondent in F.C.A.No.47 of 2010 is also the respondent in O.P.No.435 of 2006 and petitioner in O.P.No.391 of 2008. Further the second respondent in F.C.A.No.7 of 2010 and also O.P.No.435 of 2006 is not a party in the other proceedings.

3. In fact O.P.No.435 of 2006 was filed under Section 18 of the Hindu Adoption and Maintenance Act, 1956 (HAM Act) for grant of past and future maintenance and for costs to the petitioner therein

(wife). On the other hand O.P.No.391 of 2008 was filed by the petitioner therein (husband) under Section 13(1)(ia) of the Hindu Marriage Act, 1955 (HM Act) for dissolving his marriage with the respondent (wife) and for costs.

4. It is pleaded in O.P.No.435 of 2006 for the petitioner therein as follows:

On 27-04-2001 the petitioner (wife) married the first respondent as per Hindu rites and customs. Immediately the marriage was consummated. But from the beginning the first respondent subjected the petitioner to harassment to bring additional dowry from her parents which was encouraged by his father i.e., the second respondent and his mother. Even the second respondent and his wife instigated the first respondent to beat the petitioner to achieve their demand. The respondents and the mother of first of them also used to abuse the petitioner in vulgar language and beat her without any fault of her.

They were not even providing food and amenities to her. Further during the last week of June, 2006 the parents of the petitioner went to the respondents' house to see the petitioner. Then the respondents abused them in filthy language and necked them out threatening that unless their demand was met, they would not allow to see the petitioner. Ultimately on 10-07-2006 the respondents also necked out the petitioner from the matrimonial house snatching away all her gold jewellery by reason of which she joined her parents' house. Further she got no capacity to maintain herself whereas the respondents got means to do so. In fact the petitioner prayed for awarding Rs.5,000/- towards her maintenance against the respondents.

5. The first respondent filed counter adopted by the second respondent denying the material pleas taken therein. According to the first respondent the petitioner herself deserted him without any fault on their part. He claimed in his pleadings specifically that in the month of July, 2006 she joined her parents and had been living there. Further he claimed that he sent one G. Prakash and one R. Jagannathan Rao

to the petitioner to negotiate for restitution of conjugal life which proved to be futile. According to him the petitioner got no interest to lead marital life with him. He also claimed that in the corresponding reconciliation proceedings the petitioner deliberately expressed her unwillingness to join him. According to him further they are Goldsmith by profession by which they prepare gold jewels on orders placed before them as a result of which they earn Rs.1,500/- only per month. Their plea ultimately is that the petitioner is not entitled to any maintenance from them.

6. In O.P.No.391 of 2008 the petitioner therein i.e., the first respondent in O.P.No.435 of 2006 (husband) reiterated the pleas taken by him in the counter filed in the other O.P. It is further claimed by him that after the marriage his family members treated her with great honour, love and affection and they lead happy marital life as well as social and economic life then. He alleged that she never used to shoulder any responsibility in the house and after the marriage, she went to the house of her parents at Vijayawada during Ashada Masam and returned in Sravana Masam during the year 2001 whereas some change was found in her attitude thereafter. His claim is that her mother gradually spoiled her mind because of imaginations in consequence of which she developed little aversion and dissatisfaction towards his family members. It is his further claim that she started demanding to set up separate family leaving his family members, but he refused because of his family constraints. Hence he pleaded for granting divorce to him on the ground of irrevocable breakdown of the marriage life.

7. On the other hand, she filed counter repeating almost what she pleaded in the petition filed by her in the other O.P.

8. In fact evidence was let in O.P.No.435 of 2006 for both the petitions. For convenience sake, we refer the parties as arrayed therein or as examined before the Court below.

9. For the wife she got herself examined as PW-1 whereas for

the husband he got himself examined as RW-1 and further got examined one R. Jagan Mohan Rao as RW-2 and his sister G. Radha Rani as RW-3. For both the sides, no documents were marked.

10. As seen from the pleadings and the evidence adduced, it is not disputed that PW-1 left the matrimonial house on 10-07-2006. Mainly the Court below considered the evidence of RW-2, Jaganmohan Rao, husband of PW-1's senior maternal aunt apart from some important admissions made by PW-1 in this context. The evidence of RW-2 is as follows:- He and his wife used to contact PW-1 by phone to know about her family life at her in-laws house. Never PW-1 complained against RW-1 or his family members to them. In fact the parents of RW-1 are affectionate and are also persons with responsibility towards relatives and friends. He corroborated the evidence of RW-1 that PW-1 was always under the influence of her mother by reason of which she deserted RW-1 and joined with her parents and in spite of the efforts made by RW-1, PW-1 did not join the matrimonial house. He also deposed that at the instance of RW-1 and his family members, he and his wife went to the parents' house of PW-1 in the last week of August, 2006 and asked her mother to send PW-1 to the matrimonial house, but she and PW-1 refused their request whereas subsequently PW-1 filed the maintenance case against RW-1. A suggestion was given to RW-2 to the effect that he wanted to give his daughter in marriage to RW-1 subject to granting divorce between RW-1 and PW-1 by reason of which he gave false evidence in favour of RW-1 which he denied. It was also elicited from him that his daughter was already married by reason of which that suggestion would not be tenable.

11. Apart from that PW-1 did not speak where and when the family members of RW-1 insisted or demanded her to bring additional dowry from her parents and abused her. Further if RW-1 was at fault, the probable conduct of her parents would have been to conduct necessary reconciliation for the settlement of the dispute, but there is

no basis to say that they did so for which adverse inference is to be drawn. On the other hand

PW-1 deposed that she was beaten by RW-1, which plea in fact was not taken in her pleadings which, therefore, is not acceptable. On the other hand RW-3, sister of RW-1, deposed about the conduct of PW-1 in the house by and large.

12. On the basis of the evidence adduced, the Court below came to the conclusion that RW-1 substantiated his claim whereas PW-1 failed to substantiate her claim, that PW-1 herself deserted RW-1 by reason of which RW-1 suffered mental agony which would amount to cruelty whereas at the end on those grounds allowed O.P.No.391 of 2008 granting the relief prayed by him while dismissing O.P.No.435 of 2006 rejecting the plea of providing maintenance to her.

13. Learned counsel for PW-1 would contend that RW-1 in his cross-examination admitted that PW-1 did not treat him with cruelty, that he failed to establish his claims, that RW-3 admitted that she did not like PW-1 and RW-1 getting on together which proves how badly PW-1 was treated in the house and also after she left the house whereas in fact PW-1 substantiated her claim. Thereby according to him the Court below failed to appreciate the matter properly. Hence he seeks that the findings given by the Court below are liable to be set aside. It is also according to him that there are good grounds to award Rs.5,000/- per month towards the maintenance of PW-1 against RW-1.

14. While replying, learned counsel for RW-1 contends that RW-1 could establish that PW-1 herself deserted RW-1 for more than two years and in spite of efforts made by him (RW-1) she did not join the matrimonial house without any lawful reason. He also contends that there is absolutely no reason to disbelieve the evidence of RW-2, a close relative of PW-1 who got no need to speak falsehood against PW-1. He claims that the Court below properly examined and disposed of the matters in consequence of which the findings given correspondingly are not liable to be interfered with.

15. In order to dispose of the appeals, the following points are to be answered:

1. Whether RW-1 had placed sufficient evidence for granting divorce in his favour and against PW-1?
2. Whether PW-1 had placed sufficient evidence to hold that RW-1 deserted and neglected her and thus she is entitled for maintenance as prayed for?
3. Whether the Court below properly appreciated the matter and its findings are tenable or not?

**Point No.1**

16. By virtue of Section 13(1)(ia) of the HM 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.

17. RW-1 has been seeking for divorce on the ground of cruelty and desertion against PW-1. In fact as observed by the Court below, PW-1 failed to substantiate her claim to the effect that RW-1 and his family members treated her with cruelty and also deserted her. On the other hand RW-1 placed good evidence to the effect that having been influenced by her mother PW-1 herself left the matrimonial house and in spite of necessary efforts made by him, she did not return back to lead marital life with him. Here the evidence of RW-2 in fact is very important. He clearly supported the claim of RW-1 by and large. There is absolutely no reason to discard his evidence. His evidence is to be given utmost credibility because he happened to be a close relative of PW-1 and he got no need to speak against PW-1. Thus it is clearly proved that PW-1 herself left RW-1.

18. However, in fact RW-1 himself admitted in his

cross-examination that never PW-1 treated him with cruelty which, therefore, is to be accepted as true and correct. Further the expression cruelty is not defined in HM Act. The question of determination of cruelty depends upon the facts and circumstances of each case.

19. In **SUJATA UDAY PATIL v. UDAY MADHUKAR PATIL** <sup>[1]</sup> considered by the Court below, it is observed by the Supreme Court “The law has no standard by which to measure the nature and degree of cruel treatment that may satisfy the test. It may consist of a display of temperament, emotion or pervasion whereby one gives vent to his or her feelings, without intending to injure the other. It need not consist of direct action against the other but may be misconduct indirectly affecting the other spouse even though it is not aimed at that spouse. It is necessary to weigh all the incidents and quarrels between the parties keeping in view the impact of the personality and conduct of one spouse upon the mind of the other. Cruelty may be inferred from the facts and matrimonial relations of the parties and interaction in their daily life disclosed by the evidence and inference on the said point can only be drawn after all the facts have been taken into consideration. Where there is proof of a deliberate course of conduct on the part of one, intended to hurt and humiliate the other spouse, and such a conduct is persisted, cruelty can easily be inferred.”

20. In fact by virtue of these observations of the Supreme Court, the Court below came to the conclusion that due to the behaviour of PW-1, RW-1 suffered mental agony which amounted to mental cruelty which is not acceptable in view of the admission made by RW-1 that PW-1 never treated him with cruelty.

21. What is significant is that admittedly there has been no cohabitation between PW-1 and RW-1 since 10-07-2006 whereas the petition for divorce was filed in 2008. It is not in dispute that the petition was filed after a gap of two years from 10.7.2006. The time lapse after filing the corresponding proceedings cannot be taken into consideration for computing that period. What is important here is that the mandate of the relevant provision that there should be desertion for

a continuous period of two years immediately preceding the presentation of the petition for divorce on that ground is complied with whoever may be at fault. Desertion is the active or willful termination of an existing cohabitation without the consent, express or implied, of the party alleging desertion and against his or her wish. The circumstances of the case also amply prove that PW-1 left the matrimonial house and in spite of necessary efforts made by RW-1, she did not return back and on the other hand she has not shown any interest to do so. Therefore, without any hesitation, it is held that she has abandoned the matrimonial house once for all and the marital bond has been irretrievably broken down. Hence, on that ground, RW-1 is entitled for divorce against her.

**Point No.2**

22. With regards to the question of awarding necessary maintenance to PW-1, in respect of wife who was granted divorce, it is to be examined as to whether this question can be considered under Section 18 of HAM Act.

23. As PW-1 alone has been responsible for the breakdown of the marital bond, the Court below held that she was not entitled for any maintenance from RW-1.

24. Under Section 18(1) of the HAM Act, a Hindu wife, whether married before or after the commencement of this Act, shall be entitled to be maintained by her husband during her life time, and by virtue of clause (2) thereof, a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance,-

(a) if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of wilfully neglecting her;

(b) if he has treated her with such cruelty as to cause a reasonable apprehension in her mind that it will be



harmful or injurious to live with her husband;

(c) if he is suffering from a virulent form of leprosy;

(d) if he has any other wife living;

(e) if he keeps a concubine in the same house in which his wife is living or habitually resides with a concubine else- where;

(f) if he has ceased to be a Hindu by conversion to another religion;

(g) if there is any other cause justifying her living separately.

25. Therefore, clause 2(g) makes it clear that in order to claim maintenance, there should be a cause justifying her living separately. In other words this makes it clear that if PW-1 is guilty of desertion against RW-1 she is not entitled to any maintenance under this provision.

26. Whereas Sections 11 to 18 of the HM Act deal with the question of nullity of marriage and divorce, sections 19 to 21, 21A, 21B, 21C, 22 to 28 and 28A thereunder deal with the question of jurisdiction and procedure in that behalf. Section 25 of HM Act is relevant here. This Section specifically deals with the question of permanent alimony and maintenance subsequent to granting divorce in respect of an individual though it is not specifically incorporated therein that it is in relation to divorced wife or husband. The question of permanent alimony or the consequential maintenance arises only after granting divorce, which makes it categorical that this provision is intended for divorced wife or husband only. This provision enjoins "Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for the purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such gross sum or such monthly or periodical sum for a term not

exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.” This provision already mandates that the question of granting maintenance to such divorced wife or husband would arise subject to the conduct of the parties.

27. Learned counsel for RW-1 would contend that Section 18 of the HAM Act only applies when marriage between two spouses is subsisting and the wife continues to have the status of wife. According to him after granting divorce she is not entitled to any maintenance under that provision. He also contends that when divorce is granted against PW-1 on the ground of desertion of RW-1, on that ground also she is not entitled for any maintenance from RW-1.

28. Section 18 of the HAM Act does not specifically speak of granting maintenance to a divorced wife. In fact significantly clause 2(a) thereunder provides that a Hindu wife shall be entitled to live separately from her husband without forfeiting her claim to maintenance if he is guilty of desertion, that is to say, of abandoning her without reasonable cause and without her consent or against her wish, or of willfully neglecting her.

It infers that if the wife alone is guilty of desertion of the husband, she is not entitled for any maintenance from him.

A question arises thereby as to whether the provisions of Section 25 of the HM Act can be invoked while dealing with a petition filed under Section 18 of the HAM Act for granting maintenance to a divorced wife against whom divorce was granted in favour of her husband on her own fault which would fall within the ambit of Section 13 of the HM Act.

29. In **VIHALAL MANGALDAS PATEL v. MAIBEN VIHALAL PATEL** <sup>[2]</sup>, it was observed (at para-7 therein) with reference to exactly similar circumstances as follows, “Originally, the Hindu marriage,

succession, minority, guardianship, adoption and maintenance were part of one Hindu Code Bill and later on they took statutory form by different Acts, but the Legislative intention to provide maintenance to the spouse even after divorce which is contained in Sec. 25 of the HM Act, has to be read into both the sections and provisions in both the Acts. Same Legislature cannot be imputed with two different intentions in respect of the same couple on the same question. Under Sec. 25 of the HM Act, if the provision regarding maintenance is to be applicable, both to a wife and a divorced wife, there is no reason why the same word "wife" which is used in Sec. 18 should not be read in the same manner because both these provisions deal with the question of maintenance between a husband and a wife. Under Sec. 25 of the HM Act, there cannot be any doubt or dispute that the wife would necessarily include a divorced wife for the purposes of maintenance and alimony even though the section uses the words "wife" or "husband" and not "divorced wife" or "divorced husband" and it also provides for maintenance not exceeding the life of the applicant. Similarly, in Sec. 18 of the HAM Act, though the words used are "wife and husband" the maintenance is provided by the husband during the life time of the wife. Thus, the scheme of both these sections is the same; the purpose is the same; the words used are the same. Therefore, when the word "wife" in Sec. 25 of the HM Act includes a divorced wife, so also in Sec. 18 of the HAM Act, the word "wife" has to be interpreted to mean a divorced wife. Any other construction would lead to anomalous and contradictory situations and orders. If the wife makes an application under Sec. 25 of the HM Act for maintenance even after divorce, that would be maintainable, but if she makes an application for the same purpose under Sec. 18 of the HAM Act, it would not be maintainable even though both the provisions have same purpose in mind and the same intention to provide maintenance to the wife. Therefore, it is reasonable to hold that the words "wife" and "husband" are used to describe the relationship to provide for maintenance during the life time of the wife and it includes a divorced wife and by doing so, there is no violation done of the language or the meaning because the meaning is always to be taken from the context and intention. For example, a married woman living happily with her husband can be held to be a widow on the question of succession to the

property of her former deceased husband and by describing her as widow, there is no violence done to her present marital status of having a husband and happily living with the husband because the meaning has to be given in the context of the purpose and the intention. Similarly, when a question of maintenance arises between a husband a wife, it arises only in a situation where there are serious disputes between the husband and a wife and which may arise before divorce or thereafter and Legislature makes the provision for the same.”

30. On necessary analysis we find it difficult to accept these observations as it appears that the legislative intendment in framing Section 18 of HAM Act and Section 25 of HM Act are quite different. This is born out from the fact that Section 18 of HAM Act is intended for granting divorce to a wife when her marriage with her husband has been subsisting against her husband subject to the limitations provided therein, whereas Section 25 of HM Act is intended for granting maintenance to a divorced wife or husband subject to their conduct. No doubt, “wife” includes a divorced wife under normal parlance, but the question of awarding maintenance to her either as a wife or divorced wife should be within the legislative intendment or spirit. In other words, when the legislature framed Section 18 of HAM Act in the context of providing maintenance to a wife against her husband while their marriage has been subsisting, that is quite different from its intention in framing Section 25 of HM Act, the provisions of which are made applicable only to a divorced wife or husband subject to the conduct of himself or herself. The interpretation made in the decision cited to treat a wife who is not a divorcee and the wife who is a divorcee on equal footing for the purpose of awarding maintenance under Section 18 of HAM Act does not appear to be logical.

31. The legislative intendment of framing various provisions for granting maintenance to a wife or a husband or any of their relatives as enshrined definitely was to uphold the concept of marriage. ‘Marriage’ is the sacred union, legally permissible, of two

healthy bodies of opposite sexes. It has to be mental, psychological and physical union. When two souls thus unite, a new soul comes into existence. That is how the life goes on and on this planet (see **Mr. 'X' v. Hospital 'Z'**<sup>[3]</sup>). By marriage two souls are united following which they start living together. The purpose of life is to live happily which can be attained by maintaining peace and tranquility between two persons or among group of persons within the society at large whatever may come or intercept. To achieve that object one has to mould himself or herself while dealing with any eventuality which he or she may come across. When there is no adaptability differences are bound to arise which may lead to break down of relationship between two individuals or among different individuals as the case may be unless rectified by prudence and sensibility. The system of marriage have bearing not only upon two individuals i.e., spouses but also among their family members and the society because the family is a unit in the society. According to Hindu philosophy the purpose of marriage is to serve mainly the other components of the society. That objectivity is not only for the purpose of serving the society at large but also maintaining love, peace and tranquility among the members of the society and contributing for its prosperity.

32. In the context of the observations made above awarding maintenance to a wife because of whose fault the marriage between her and her husband has been broken is against the concept of marriage. How can one of the spouses who got no respect for the marital bond be granted maintenance. The wife or husband will have the obligation of maintaining the other spouse when the other spouse is neglected by him or her without lawful excuse having got sufficient means while the other spouse got no means to maintain herself or himself having entered into the wedlock.

33. Thus it is not proper to uphold the plea of the P.W.1 to provide maintenance to her in the circumstances enumerated as

against R.W.1. The point is answered accordingly.

**Point No.3**

34. In view of the findings on Point Nos.1 and 2, it is clear that the Court below by and large appreciated the relevant facts and law properly. There are no reasons to interfere with the findings of the Court below.

35. In the result, both the appeals are dismissed confirming the orders passed by the Court below. The miscellaneous petitions if any shall stand closed. No costs.

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**ASHUTOSH MOHUNTA, J**

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**G. KRISHNA MOHAN REDDY, J**

October 19, 2012.

NOTE:

**L.R. Copy be marked.**

(By order)

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[\[1\]](#) 2007(2) ALD 45 (SC)

[\[2\]](#) AIR 1995 GUJARAT 88

[\[3\]](#) AIR 1999 SC 945 : (1998) 9 Supreme 220