

IN THE COURT OF PRINCIPAL SENIOR CIVIL JUDGE
AT MAHABUBNAGAR

Tuesday, the 2nd day of November, 2021

Present:-Sri N.Venkat Ram,
Prl. Senior Civil Judge,
Mahabubnagar.

H.M.O.P. No.20 of 2018

Between:-

D.Narsimha @ Narsimlu s/o Sayanna, Age:36 years,
Occupation:Preent Nil, R/o H.No.1-117,
Mothighanpur Village, Balanagar Mandal,
Mahabubnagar District.

...Petitioner

And

Smt.D.Anitha @ Vaishnavi w/o D.Narsimha, Age:31 years,
Occupation:Housewife, R/o Chinna Golla Pally village
Shamshabad Mandal, Ranga Reddy District.

.....Respondent

This petition came up for final hearing before me on 05-10-2021 in the presence of Sri D.Narsimha @ Narsimlu party in person and of Sri M.Yogeshwar Raj Yadav Advocate, for the Respondent and the matter having stood over for determination, till this day, the Court delivered the following:-

ORDER

1. This is a petition filed by the petitioner/husband against the respondent/wife, U/Sec 13(1)(i-a) & (i-b) of Hindu Marriage Act, 1955 seeking a relief of Decree of divorce.
2. That the petitioner had married to respondent on 01-12-2010 as per Hindu rites and customs at Chinnagolla Pally village, Shambshabad Mandal, Ranga Reddy district. Later, the respondent joined the company of the petitioner at Mothiganpur Village and started their family life at Simlanagar Colony, Chattanpally Village, Shadnagar Mandal. Both lived hardly together for one month and respondent got pregnancy and thereafter, the respondent had started comparing the value

of the properties with her maternal side and started insulting the petitioner. Even the respondent insulted the petitioner that he is dark in complexion and started picking up quarrels on every day on trivial issues. The respondent has never shown interest and dislike the visit of parents of petitioner. On 04-12-2010, the parents of petitioner came to the house at Shadnagar and then the respondent quarreled with the parents of the petitioner and necked out them from the house. On 01-01-2011, the respondent had left the company of the petitioner without information and without leaving any message. The respondent being the youngest daughter to her parents, she grew up very freely and always willing to live sophisticated life in luxurious manner. Panchayaths were held before the caste elders and the respondent promised to change her behavior but she again switched over with her previous manner.

a) On 13-09-2011, the respondent gave birth to a baby girl and the respondent did not allow the petitioner to see the baby girl. On 05-07-2012, panchayath was held before well wishers of both sides and later, they took house on rent at R.B.Nagar, Shambshabad. The respondent did not change her behavior and attitudes. Further, she pressurizes the petitioner to demand for partition of joint family properties. The petitioner refused for the same and then the respondent left the house without leaving any message or information and started living with her parents and put a condition that she will return if the properties transferred in her name.

b) The respondent and her family members on 11-07-2021, had given a complaint to the police Shamshabad on the

allegation of demand of additional dowry and he and his family members appeared before the SHO, Shamshabad and obtained anticipatory bail from the Hon'ble Metropolitan Sessions Judge's Court, Cyberabad vide order dated 25-08-2012. Later, the respondent started living at Chinnagolla Pally Village with her parents and she has no intention to lead the life with the petitioner. The petitioner suffered from depression due to the cruel acts of the respondent and came to conclusion that there is no possibility of reunion. As such, filed O.P for divorce on the file of Hon'ble Family Court, Ranga Reddy district vide OP No.1353/2012. The respondent appeared in that O.P and thereafter, filed Criminal case U/Sec 498-A of IPC with false and baseless allegations vide CC No.14/2014 on the file of 17 Metropolitan Magistrate, Cyberabad vide Crime No.219/2012 of P.S.Shamshabad. The petitioner was subjected to manhandled by the police and he was remanded to prison, Cherlapally. Later, the respondent changed her mind and deposed before the Hon'ble Court as she filed a false case and on 25-08-2015, the Hon'ble Court acquitted the petitioner along with other accused. During the pendency of above criminal case, the respondent had lodged a criminal case vide STC No.1/14 on the file of Special Judicial Magistrate of First Class, Rajendranagar and after one year the petitioner was acquitted vide Judgment dated 16-07-2014.

c) The respondent again filed a criminal case vide CC No.517/2014 on the allegation that the petitioner had contracted second marriage and living with second wife. The petitioner was remanded to Judicial custody for 15 days. Later,

the respondent turned hostile and the petitioner was acquitted. After disposal of criminal cases, the respondent requested the petitioner that she will change her behavior and withdraw her false criminal cases. Then, the respondent joined the petitioner at his residence at Mothiganpur village in the month of May, 2015 and stayed together only for few days but there was no change in the behavior of the respondent. The respondent left the company of the petitioner and filed a criminal case vide CC No.277/2016 on the file of VIII Metropolitan Magistrate at Rajendranagar. The petitioner and his family members are still attending the court till today. The petitioner has lost his job and earnings and as such, his younger brother Anjaiah had spend heavy money for court expenses, lawyer expenses, transportation and other miscellaneous expenses. Therefore, the petitioner transferred his share of property in favour of his brother. The petitioner due to the torture, he could not proceed with the divorce petition as such the same was dismissed for default.

d) Since the date of marriage the petitioner never lived happily with respondent over a period of seven years and the respondent hardly stayed only for three or four months. The cruelty subjected against petitioner shows that the respondent has no interest to join the petitioner and the respondent has deserted and withdrawn the company of the petitioner and staying with her parents for the past seven years. The acquittal of the petitioner in criminal cases prove the ground of cruelty and also proves the grounds of desertion. Finally, it is submitted that the marriage between the parties is irretrievably

broken down and there is no further chance of reunion between the parties. Hence, prays to grant decree of divorce by dissolving the marriage solemnized on 01-12-2010.

3. The respondent had appeared through her counsel and filed counter by denying the allegations leveled against her. The respondent has admitted the divorce proceedings initiated by the petitioner, the lodging of case with police vide FIR No.219/2012 dated 13-12-2012. It is submitted that at the time of marriage, the parents of respondent had given ten tolas of gold, motor bike, open plot admeasuring 300 Sq.Yards situated at Chinnagolla Pally Village, cash of Rs.5,00,000/- and house hold articles worth of Rs.40,000/- as dowry on the demand of petitioner and his parents. Further, submitted that after three months from the date of marriage, the petitioner and his parents had demanded for additional dowry.

ii) Two months prior to the expected due to delivery, the petitioner had insisted and forced the respondent to go and to stay with her mother and he did not attend the medical expenses towards the incurred for delivery. The petitioner and his parents did not visit the child till lapse of three months from the date of delivery. Even after birth of child, the petitioner had insisted and demanded for additional dowry of Rs.5,00,000/- as she has given birth to girl child. After dismissal of OP No.1353/2012 in order to continue marital life, she had not deposed against the petitioner in the criminal cases, as such, the same were dismissed. Thereafter, the respondent had joined the petitioner and continued their marital life. However,

even after reunion on the first day of night, the petitioner and his family members beat and harassed the petitioner mentally and physically and not provided the food and the respondent had bear the harassment for the sake of future of child. The petitioner till today has not provided any amount towards the educational expenses of child, he had not taken the responsibility of child education and health. The petitioner filed the present petition which is nothing but replica of divorce petition. The petitioner has no cause of action to file the petition and the present petition is filed only to avoid the obligations and responsibilities of petitioner to maintain his wife and daughter. Hence, prayed to dismiss the petition with costs.

4. Later, the matter referred to the mediation and posted for reconciliation but it appears parties had not been shown any interest for settlement of their disputes either through mediation or by attending reconciliation. Therefore, having no other alternative my predecessor in office has posted the matter for enquiry.

5. In order to prove their respective contention on behalf of petitioner, PW.1 was examined and marked Exs.A1 to A8 and on behalf of respondent DW.1 was examined and marked Exs.B1 to B13.

6. Heard the petitioner, learned counsel for respondent. Written arguments filed on behalf of petitioner and today written arguments filed on behalf of respondent. Perused the record.

7. Now the points for consideration are:-

1. Whether the Petitioner could able to prove the ground of cruelty subjected by the Respondent against Petitioner?
2. Whether the Petitioner could able to prove the ground of desertion?
3. Whether the Petitioner is entitled for divorce as prayed for?

8. The marriage between parties and filing of several cases including filing of OP No. 1353 of 2012 on the file of Hon'ble Family court and it's dismissal are undisputed facts. The parties herein are not in controversy over these facts. Further the reunion of parties subsequent to dismissal is also an undisputed fact.

POINT No.1:

9. Now let us proceed to analyze and weigh the evidence adduced on behalf of both parties.

(i). The material on record would suggest the grounds of cruelty on two Phases. One is prior to the dismissal of earlier OP and prior to re union and second is subsequent to dismissal OP and subsequent to remain.

(ii). Ex.B5/R5 is the order passed by the Hon'ble Family court Ranga Reddy District where under the Hon'ble court had dismissed the petition for not prosecuting the same. It is an undisputed fact that all the alleged incidents had been pleaded in the said OP which is evident from Ex-B4. Further, it is also born by record that all the criminal cases ended in acquittal, however it appears those are not clean acquittals which are evident from Ex-A4 to A6.

(iii). According to the Petition averment he could not contest the Petition because of stress due to filing of several false cases. But at the same time the Petitioner has pleaded about reunion.

(iv). Now let us examine whether the Petitioner can re-agitate the same grounds which were pleaded in OP No.135 of 2012 and the incidents occurred pre-reunion period. The answer is no for two reasons.

(v). The first reason is subsequent to the dismissal, according to the Petitioner, there was re-union of parties. This court is of the opinion that reunion of parties would indicate a forgiveness of past unfortunate incidents happened during matrimonial life. This could be the foundation for reunion. This foundation could strengthen the trust and confidence among the couple to continue their matrimonial journey a fresh. Therefore, once parties entered on a path of reunion it is just nothing but waiver of earlier unfortunate incidents. In the case on hand, the foundation for filing the present case is reunion. Therefore, the plea of reunion precludes the Petitioner from re-agitating the earlier unfortunate incidents. On this score this court holds that the grounds pleaded in earlier petition and incidents occurred prior to reunion would not be available to the Petitioner in this case.

(vi). Move on to second reason, it is a public policy which prevents the parties from going on agitating the cause endlessly and to protect the parties from un-ended litigation. These principles incorporated in Civil Procedure Code 1908 herein after referred to as CPC. Apart from principle of resjudicata, Section

12 R/w Order IX Rule 9 of CPC also prevents the parties from bringing a fresh case in respect of same cause of action. It appears from material on record the Respondent herein had filed her counter and later the OP was dismissed for not adducing evidence by the Petitioner. No doubt the Petitioner had added subsequent events to earlier cause of action. In the considered opinion of this court subsequent events wouldn't revive the earlier cause of actions to the party who was at fault end to continue the lis. Application of this rule in strict sense to the proceedings in matrimonial matters is desirable to curb from filing applications on the same grounds by the parties who are at fault end. Therefore, the Petitioner can not re-agitate the said grounds again in this petition.

(vii). In view of reasons assigned in the foregoing part of order, this court confined to the case of petitioner to the extent incidents occurred subsequent to dismissal of OP and during subsistence of reunion.

10. (i). It is specifically pleaded in the Petition that the Respondent had joined the Petitioner on 15-05-2015 at Motiganpur Village and after few days she left the company. The Respondent has also admitted the reunion with Petitioner. However, the Respondent contention is the Petitioner and her family members had subjected her to cruelty. Therefore, now the question before the court is whether there is any cruelty meted out by the Petitioner during post reunion period.

(ii). The Chief examination Affidavit of Petitioner/Pw1 is reiterated the contents of Petition except with little variation. During cross-Examination, The learned Counsel for Respondent

has elicited certain crucial material from the mouth of Pw1.
Some of them are:

(a). Before filing of HMOP 1353/2012 the Respondent had not filed any police complaint.

(b). CC 14/2014 was filed after filing of HMOP for divorce and the same was disposed on 25-08-2015 by acquitting in view of compromise.

(c). The Respondent had never stated that she is having more properties than the Petitioner and also she is more fair than Petitioner.

(d). Prior to filing of this Petition and till now did not pay any maintenance amount to the Respondent.

(e). All educational expenses of his daughter are paid by the Respondent as on today.

(iii). From the above material it appears that the legal battle had commenced by the Petitioner but not the Respondent. It appears as a retaliation the cases might be filed by the Respondent. However, in our society the people like the parties herein mostly depended on the advise of elders, well wishers and including their counsels particularly at the time of institution of cases. More particularly in matrimonial cases the parties who are already under mental stress and agony very common they will go by the advise of their Counsels. It appears the material on record would disclose that the Petitioner is the first striker who commenced the legal battle but not the Respondent.

(iv). Further it is important to note that the material noted herein above would indicate the initiation of Respondent for settlement by withdrawing from prosecution of cases.

(v). Move onto relevant point about cruelty during post reunion, the Petitioner had not pleaded any particulars of cruelty and its forms. It is pleaded that Respondent is continuing her cruel acts by filing false criminal cases and sending the Petitioner to jail and making the Petitioner and her family members roaming around the courts till date. However, in the chief examination affidavit Pw1 has referred to a number 277/2016 on the file of VIII Metropolitan Magistrate At Rajendra Nagar. Ex-A3 which is consisting with FIR, Report, Charge sheet with police statements referring to Cr.No 290/2015 which appears to be CC No. 277/2016.

(vi). On careful perusal of Ex-A3 it contains an allegation that after reunion as per the advise of elders, the Petitioner and his parents demanded for amounts to meet the expenses incurred for prosecuting/defending the cases and then only the Respondent would be allowed for conjugal life. It appears these allegations are supporting the contention of Respondent who pleaded cruelty during the period of reunion. Neither the Petitioner nor the Respondent has not stated about the status of said case. Therefore It can infer that those allegations are pending for adjudication before competent court. Therefore, at this stage this court is of the considered opinion that it is not desirable to dwell upon the correctness of the allegations made in Ex-A3. If it is a case already adjudicated by a competent criminal court, then this court certainly venture to form its

opinion over Ex-A3. Therefore this court restrained from entering into the domain of a competent criminal court. Except the case one referred, the Petitioner had not placed any material regarding false criminal cases.

(vii). The Petitioner in support of his case relied on the decision of Hon'ble Supreme court rendered in **K.Srinivas Vs. K.Sunita [Civil Appeal No. 1213 of 2006 dt. 19-11-2014]**. In this decision the Hon'ble Supreme Court had found the complaint as after thought and more over High court had been informed acquittal of husband and members of his family. Under said circumstances the it was held that conduct of wife constitutes cruelty as postulated in Section 13 (1) (ia) of Act. In the case on hand there is no material on record to conclude that the complaint of Respondent is a false one and further there is no material placed regarding it's status. Therefore the facts of the decision and case on hand are different and distinguishable.

(viii). The Petitioner further relied on a decision of Hon'ble Bombay High court rendered in **Nitin Ramesh Dhiwar Adult Vs. Roopali Nitin [Dhiwar Adult Family court Appeal No.118 of 2006 dt. 16-08-2012]**. In this case the husband was acquitted by the Judicial Magistrate, First Class, as such an inference drawn that the Respondent filed a false complaint. In the case on hand there is no material available on record regarding acquittal of Petitioner. Therefore facts of the decision are totally different.

(ix). In view of aforesaid reasons and analysis of evidence on record, this court holds that the Petitioner has failed to prove the grounds of cruelty subjected by Respondent against the

Petitioner. Accordingly this point is answered against Petitioner and in favor of Respondent.

POINT No.2:

11. (i). Move on to the ground of desertion, the Petitioner has pleaded desertion since 7 years. However in the foregoing part of order this court has reached to a finding that the earlier grounds are not available in view of dismissal of HMOP and as well as reunion. Now it is to be seen whether the ground of desertion is available for the Petitioner from the date of reunion. It is admitted by the both parties that they are living separately after reunion. Therefore the question before the court is whether the Respondent had left the matrimonial society of Petitioner without any reasonable cause.

(ii). It is pertinent to note that after reunion the Respondent had lodged a report with police and the competent criminal court had taken cognizance of the said offence on the allegations of cruelty and demand for additional dowry against Petitioner and his parents. The said accusations are yet to be decided. Therefore this court has restrained from dwell upon the correctness of said accusations.

(iii). During the course of arguments, the Petitioner had argued that Rw1 had not offered explanation on certain text messages which was delivered to the Petitioner's mobile. It appears these messages are not pertaining to the period of post reunion. Therefore not offering explanation would not have any effect and has no relevancy.

(iv). It is important to note that the Petitioner did not specifically pleaded and deposed about absence of cohabitation

during reunion. It is also important to note that the evidence of Pw1 would reveals that he has not paid any maintenance to the Respondent and the Respondent has paid educational expenses of daughter. This would show the conduct of Petitioner and his attitude towards Respondent and his daughter. It appears from record that the Petitioner has not complied the monitory relief as awarded in Ex-B8. However, it appears from cross-examination of Pw1 an appeal has filed against Ex-B8. Further the Petitioner had taken inconsistent versions on the dismissal of earlier divorce petition. Adding to this evidence, Pw1 initially denied a suggestion posed on reunion after disposal of earlier divorce Petition and CC 14/2014, but when confronted with specific para of his petition he admitted the reunion. This could also gives a shadow over the credence of Pw1 and as well as over his testimony.

(v). Viewing the case from this angle, it is very difficult to accept that the Respondent had left the matrimonial society of Petitioner without any reasonable cause. Further adequate material is not available on record to prove that the Respondent has no intention for cohabitation. On the other hand the evidence referred herein above would disclose the adversities faced by the Respondent along with her minor girl child and which appears to be still continuing. At any rate the material on record is inadequate to prove the desertion and intention of Respondent to bring the cohabitation to an end.

(vi). The Petitioner in support of his case relied on decision of Hon'ble Rajasthan High court rendered in **Giriraj Prasad Sharma Vs. Smt. Tara Mishra II [(1999) DMC**

479] In the said decision the Hon'ble High court had found that the wife left the matrimonial home and had continued to stay away from the husband with the intention of bringing cohabitation permanently at an end. In the case on hand adequate material is not available on record to show the intention of Respondent to bring the cohabitation permanently to put an end. Further the material on record is inadequate to show that the Respondent left without any reasonable cause. The facts of the decision and case on hand are different and distinguishable.

(vii). In view of aforesaid discussion and analysis of evidence, in the absence of adequate material this court holds that the Petitioner has failed to establish the ground of desertion. Accordingly this point is answered against Petitioner and in favor of Respondent.

POINT No.3:

12. In view of answering Points 1 and 2 against Petitioner, as such Petitioner is not entitled for divorce as prayed for. Accordingly this point is answered against Petitioner and in favor of Respondent.

In the result, petition is dismissed with costs.

Dictated the para nos.1 to 6 to Stenographer and the remaining matter has typed to diction corrected and pronounced by me in open court on this the 2nd day of November, 2021.

**PRL.SENIOR CIVIL
JUDGE
MAHABUBNAGAR**

**APPENDIX OF EVIDENCE
Witnesses examined**

For Petitioner:-

PW1: D.Narsimha @ Narsimulu

For Respondent:

RW-1 Smt.D.Anitha @ Vaishnavi

Exhibits marked

For petitioner:

Ex.A1 is original marriage card

Ex.A2 is original marriage photo

Ex.A3 is CC of complaint in FIR No.290/2015/277/2016, Dt:27-10-2015 along with charge sheet.

Ex.A4 is CC of order in CC No.14/2014, Dt:25-08-2015

Ex.A5 is CC of Order in STC No.1/2014, Dt:16-07-2014

Ex.A6 is CC of Order in 517/2014, Dt:30-06-2015

Ex.A7 is CC of complaint, FIR vide No.164/2013(CC 517/2014) along with charge sheet.

Ex.A8 is CC of complaint along with FIR 219/2012

For Respondent:

Ex.B1 is CC of Chaitanya Junior College Brochure

Ex.B2 is CC of wedding card and photos

Ex.B3 is CC of Birth certificate of daughter, Dt:18-07-2013

Ex.B4 is CC of divorce petition in OP No.1353 of 2012, Dt:04-09-2012

Ex.B5 is CC of docket order in OP No.1353 of 2012, Dt:15-06-2015

Ex.B6 is CC of Judgment in CC No.517 of 2014, Dt:30-06-2015

Ex.B7 is CC of Judgment in CC No.14 of 2014, Dt:35-08-2015

Ex.B8 is CC of Order in DVC No.11 of 2016, Dt:11-10-2019

Ex.B9 is CC of School Fees receipt, Dt:14-10-2016

Ex.B10 is CC of School Fees Receipt, Dt:01-09-2017

Ex.B11 is CC of School progress report for the year 2016-17 and answer papers

Ex.B12 is CC of Gift Settlement Deed Doc.No.7749/14, Dt:28-10-2014

Ex.B13 is CC of pahani for the year 2019, Dt:20-11-2019.

**PRL.SENIOR CIVIL JUDGE
MAHABUBNAGAR**