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APHC010043682022



**IN THE HIGH COURT OF ANDHRA PRADESH
 AT AMARAVATI
 (Special Original Jurisdiction)**

[3545]

WEDNESDAY, THE FOURTH DAY OF FEBRUARY
 TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE BATTU DEVANAND

THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

FAMILY COURT APPEAL (FCA) NO: 4/2022

Between:

1. NERELLA CHIRANJEEVI ARUN KUMAR,, S/O. N RAMA SATYANARAYANA, AGED ABOUT 40 YEARS, R/O. D.NO. 32-14-3, 1ST FLOOR, SIVALAYAM BACK STREET, MOGALRAIPURAM, VIJAYAWADA, KRISHNA DISTRICT

...APPELLANT

AND

1. AKULA SOWJANYA NERELLA SOWJANYA, W/o. N Chiranjeevi Arun Kumar, aged 38 years, R/ o. D.No. 11-14-14, near Fish Market, Velagaleti Vari Street, Vijayawada, Krishna District.

...RESPONDENT

Appeal under section _____ against orders pleased to set aside the Judgment and decree dated 29.12.2021 in F.C.O.P NO. 634 of 2017, on the file of the XIV Addl. District and Sessions Judge -cum- Judge Addl. Family Court, Vijayawada, and pass

IA NO: 1 OF 2023

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

pleased to tag CRLP 927 OF 2021 CRLP 8277 OF 2022, FCA 39 of 2023, CRLRC 820 OF 2021 AND CRP 1159 OF 2023 along with the above appeal and be pleased and pass

Counsel for the Appellant:

1. CHALLA AJAY KUMAR

Counsel for the Respondent:

1. K RATHANGA PANI REDDY

The Court made the following:

**THE HONOURABLE SRI JUSTICE BATTU DEVANAND
&
THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA
F.C.A. No.4 of 2022**

JUDGMENT: *(Per Hon'ble Sri Justice A. Hari Haranadha Sarma)*

Introductory:-

1. This is an appeal directed against the order and decree dated 29.12.2021 passed in F.C.O.P.No.634 of 2017 by VII Additional District & Sessions Judge, FAC-XIV Additional District & Sessions Judge- cum-Judge, Additional Family Court, Vijayawada.(for short "the Family Court").
2. The appellant is the unsuccessful petitioner before the Family Court. The application filed by the appellant under Section 13(1)(i-a) of the Hindu Marriage Act, seeking decree of divorce by dissolving the marriage dated 04.06.2014 between the appellant and the respondent, was dismissed.
3. For the sake of convenience, the parties will be hereinafter referred to as the petitioner and the respondent, as and how they are arrayed before the Family Court.

Case of the petitioner:

- 4(i). Marriage between the petitioner and respondent was solemnized on 04.06.2014 at Vijayawada as per Hindu traditions and customs. Marriage was consummated and the respondent joined the petitioner at the place where he

was working, viz. Edison, N.J. on a dependent VISA. During wedlock, they were blessed with a minor child by name Gagan Nerella. As such, the child is a citizen of the USA by birth. The behaviour of the respondent was aggressive, adamant and violent. The respondent and her parents used to frequently criticize the petitioner and his parents in demeaning words and ways. The respondent used to pick up quarrels and act under the guidance and influence of her parents. She used to threaten that she would commit suicide. The petitioner was tolerating her psychic behaviour and she has even tried to cut her hands twice with a kitchen knife and by drinking toilet cleaner. The petitioner was led to depression due to the conduct of the respondent and he was taking treatment from the doctor. The respondent used to criticize the petitioner by comparing his physique and complexion with others and was asking the petitioner to undergo liposuction operation to reduce his size.

(ii). The petitioner tried to explain the behaviour of the respondent to her mother and she added her chorus to the songs of the respondent and openly proclaimed that their intention was to have their daughter settled in the USA and that they had compromised and accepted the match even though the petitioner was dark, fat and ugly. In the month of November, 2015, the petitioner and the respondent brought their child to India. The petitioner tried to explain the attitude and personality issues of respondent and he has also requested that, till the issues were settled, the respondent and the minor child be with the maternal

grandparents. The respondent never allowed access of the minor child to the parental grandparents, even as against the wishes of the minor child. Efforts made by the petitioner to settle the issues did not yield positive results.

(iii). The child was born premature and under weight. Travel of the child to abroad is against the advice of doctors.

(iv). The petitioner suffered all harassment at the hands of the respondent. Therefore, the application was filed for dissolution of marriage and grant of divorce.

Case of the respondent:

5(i). All the allegations made by the petitioner against the respondent are false.

(ii). The marriage and the birth of minor child Gagan Nerella during wedlock at the U.S.A. are true.

(iii). The petitioner proclaimed from the beginning that his family is a well reputed family in Society and that he was getting Rs.10,00,000/- per month as salary in Indian rupees. He extracted huge amounts and gifts at the time of marriage. Within two months of marriage, the respondent became pregnant. The petitioner was under the influence of his mother and sister. Respondent was kept at arm's length from his life. She has treated only as a slave to satisfy his sexual needs, made to take care of household needs and as a nanny to take care of children. She was never treated as a conjugal partner with necessary

love and affection. She was abused in sexual life, demanding various unnatural and extremely uncomfortable things. The refusal of the respondent resulted in physical and verbal abuse. Minimum care during her pregnancy was not there from the petitioner. The child was born premature and there was no support from the petitioner. The mother of the respondent travelled to the USA to support her during pregnancy.

(iv). After the minor attained ten months of age, the petitioner and the respondent came to India on a causal trip. Thereafter, the petitioner left the respondent at her parents' house and went back to USA. He has planned to desert the respondent and their child. There was no further contact. However, demand for additional dowry of Rs.15,00,000/- was made. Having no other go, a complaint dated 21.12.2016 was lodged for the offences under Section 498-A, and 377 IPC and also Sections 3 & 6 of Dowry Prohibition Act vide Crime No.54 of 2016. Then the petitioner has initiated the present divorce proceedings and an application for custody of the minor child through the paternal uncle by appointing him as a Special Power of Attorney agent.

(v). The petitioner has conveniently made the respondent a scapegoat alleging that she is the cause for his depression etc. but, in fact, the respondent is the sufferer. The proceedings of guardianship were not preceded by any means or measures or by providing any moral or financial support for the minor. The legal proceedings are schematic and deserve dismissal.

Evidence:

6(i). The petitioner was examined as P.W.1 and he has relied on three marriage photographs-Ex.A1, a Photostat copy of whatsapp chat-Ex.A2 and a copy of whatsapp chat-Ex.A3.

(ii). The respondent was examined as R.W.1 and she has relied on a downloaded copy of travel confirmation ticket, email communication letters between the petitioner and the respondent, downloaded copies of email conversations between the petitioner and the respondent and five marriage photographs.

Findings of the learned Judge, Family Court:

7(i). While addressing the point as to the entitlement of the petitioner for dissolution of marriage and grant of divorce on the ground of cruelty, the learned Judge, Family Court considered the pleadings and the oral evidence of P.W.1 and R.W.1 and held that improvement in arguments beyond the pleadings and evidence cannot be considered without any basis either in the pleadings or in the evidence.

(ii). Several authorities cited by the counsels were referred to by the learned Judge, Family Court and it is observed that there cannot be any dispute as to the findings and the judgments as to propositions of law with reference to the facts

and circumstances of the cases and that the applicability of the principles laid down in the said cases to the facts of the case is to be examined.

(iii). While addressing the core issue, the learned Judge, Family Court, found that the petitioner admitted that there were misunderstandings between the respondent and sister of the petitioner.

(iv). The respondent resided with the petitioner from June, 2014 to November, 2015. Thereafter, the petitioner and respondent did not meet each other. The petitioner admitted that when his son was aged ten months, he left the respondent at her parents' house. He has also admitted that there is delay in development and growth of his son and that his son was born pre matured, underweight with jaundice.

(v). The petitioner and the respondent hardly lived together for one and a half year. During the said period, the respondent got pregnancy. There was an increase of problems due to premature birth of the child and health issues. The petitioner admitted that since 2015, the respondent has been looking after the child and that he does not know how the respondent is taking care of child. The son of the parties is suffering from Autism.

(vi). The petitioner made allegations against that the respondent that she cut her hands with a kitchen knife and drank toilet cleaner and used to blackmail him. Respondent lodged a complaint to Police under Sections 498-A and 377 IPC and also Sections 3 & 6 of the Dowry Prohibition Act *vide* Crime No.54 of 2016. No

medical record was produced as to suicide attempts of respondent. Even the correspondence between the parties shows that the respondent enquired about the welfare of the petitioner and he responded affectionately, suggesting that the respondent was interested in leading matrimonial life.

(vii). The petitioner claimed that he did not renew the visa of the respondent and decided to take divorce. It is not his case that he asked the respondent to lead marital life and on her refusal, decided to go for divorce.

(viii). There are no grounds to grant divorce.

Grounds and Arguments in the appeal:

For the petitioner / appellant:

8(i). The respondent's adamant attitude was not considered by the learned Judge, Family Court and that she was quarrelling with the in-laws.

(ii). The learned Judge, Family Court, ought to have seen that the parents of the respondent and the respondent behaved selfishly and were cruel to the petitioner and his parents in various ways.

(iii). Assassinating the character of the petitioner amounts to cruelty.

(iv). The learned Judge, Family Court ought to have considered that there was an attempt to commit suicide by the respondent and the same will amounts to cruelty and on account of such cruelty, the petitioner is undergoing treatment for depression. Therefore, he is entitled for grant of divorce.

(v). There is no scope for reunion. Hence, the petitioner / appellant is entitled for dissolution of marriage and grant of divorce.

(vi). The case in terms of Section 377 IPC has been closed and that the prayer of the respondent / wife for restitution of conjugal rights was dismissed.

For the respondent / wife:

9(i). The respondent was subjected to harassment and cruelty with false assurances etc.

(ii). The petitioner failed to prove that he suffered cruelty in the hands of the respondent.

(iii). Petitioner's allegations as to attempt of the respondent to commit suicide is not fortified by any evidence.

(iv). The other allegation as to adamant behaviour of the respondent etc. are baseless and there is no evidence to believe the same.

(v). The dismissal of the case by the learned Judge, Family Court is proper.

10. Heard both sides extensively. Perused the material enclosed in the paper books submitted for the appellant.

11. The points that arise for determination in this appeal are:

1) Whether the petitioner / husband/appellant has proved cruelty sufficient to dissolve the marriage between the petitioner and the respondent and to grant a divorce?

2) Whether the order and decree dated 29.12.2021 passed by the learned Judge, Family Court, in F.C.O.P.No.634 of 2017 are sustainable in law and on facts or whether any interference is necessary and if so, on what grounds and to what extent?

3) What is the result of the appeal?

Point Nos.1 and 2:

12. Learned counsel for the appellant / husband, by referring to the proceedings in F.C.O.P.No.365 of 2021, M.C.No.349 of 2017, CrI.R.C.No.820 of 2021 and G.W.O.P.No.632 of 2017 covered by F.C.A.No.39 of 2023, submitted that the material in respect of those cases also may be considered.

13(i). F.C.O.P.No.365 of 2021 relates to the application filed for restitution of conjugal rights by the wife and the same was dismissed, considering the criminal cases etc., initiated, apart from other reasons. The merits in that case were considered as to whether the wife is entitled for restitution of conjugal rights.

(ii). It is not as if both cases were tried together. The dismissal of the application for restitution of conjugal rights appears to be on the ground of initiating proceedings in terms of Section 498-A IPC.

(iii). The copy of the final order in F.C.O.P.No.365 of 2021 submitted in paper book of the appellant vide para 21 shows that “unless the allegations are decided by the competent Court, the dispute remains between the parties regarding the allegations under Section 498-A IPC.” The respondent / husband is not only making allegations but also contending that the complaint filed by the respondent / wife for the offences under Section 498-A IPC is false.

(iv). Further, the learned Judge, Family Court observed that in view of the pendency of the criminal case, the respondent does not want restitution of conjugal rights of the petitioner and the same has to be accepted as a reasonable excuse. So, the Court does not want to go to the merits or demerits of both sides contentions and that the respondent has a reasonable excuse to stay away. These observations of the learned Judge, Family Court are not against the wife nor do they show that the respondent / wife has voluntarily deserted or subjected the petitioner to cruelty on the ground on which the divorce is sought.

14. Further, reference to the maintenance case M.C.No.349 of 2017 does not have any significance, as the wife and child living separately are entitled for maintenance and that issue is not the subject matter of the present case.

15. With regard to F.C.O.P.No.632 OF 2017 covered by F.C.A.No.39 of 2023, which relates to the custody of the child wherein visitation rights are provided to the wife, the appeal filed in respect of the same by the petitioner/husband has been dismissed as withdrawn / not pressed.

16. Therefore, the material enclosed in the paper book, particularly pertaining to other litigations, is not of any help to drive any interference.

17. The documentary evidence placed by both parties relates to the undisputed marriage and their living separately. WhasApp chats etc. are a matter of electronic evidence on record and the evidential value of the same is a different aspect, particularly in the light of Section 65-B of the Indian Evidence Act corresponds to Section 63 of the Bharatiya Sakshya Adhiniyam (BSA). Therefore, documentary evidence is also not of much use.

18. This Court is left with only the oral evidence of both sides. The petitioner / husband is seeking divorce. The ground on which he is seeking divorce is cruelty. Cruelty can be mental or physical. To indicate physical cruelty, there is no material. His case is that he is suffering stress and depression due to the attitude of the wife. His contention is that she attempted to commit suicide by consuming toilet cleaner and cutting her hand with a kitchen knife. Specific dates are not mentioned. No medical evidence is there, as rightly observed by the learned Judge, Family Court. There is no evidence of any third party as to the incidents having taken place.

19(i). During chief examination, the petitioner stated that "I love my wife (respondent) and he volunteered that at present he is not interested. Further, during cross examination, he has stated that there are misunderstandings between his sister and the respondent. He does not know whether his son is suffering with autism. Since 2015, his wife is taking care of his son and he does not know how she is taking care of him. He did not meet his wife or son since November, 2015, except in 2020. He has vacated the rented house in which he and his wife are living and he has given the address of his sister.

(ii). The petitioner is unable to produce any medical evidence for his depression. In spite of his suggestion that he did not take took any treatment, he said that he used to pay bills for daily expenses, medical expenses etc. but, he cannot produce any bills before the Court. It was specifically suggested on behalf of the wife that her stay with parents is not voluntary and it was due to the petitioner leaving her at her parents' house. The petitioner has admitted that after going to USA, he filed the divorce proceedings and also the guardian O.P. through GPA and the said petitions are filed after his wife filed the 498-A case against him. He has admitted that he has not paid interest amount and that he has filed revision against the said orders.

(iii). When a question was put to the petitioner during cross examination that at the instance of parents he is declining to lead matrimonial life, he has

volunteered that he has expressed before parents that he could not bear his wife and wants to take divorce. He has admitted that he is ready to take care of his child and provide basic necessities to the wife and child.

(iv). During cross-examination on 26.10.2021, the petitioner as P.W.1 has stated that his son and wife taking shelter in his in-laws' house. His advocate informed him that his wife filed a petition for mercy killing of their son before 1st ACMM, Vijayawada, in DVC proceedings and by that time he was in the USA. He has denied the suggestion that when his parents refused to take his wife and child, having been vexed, she stated in open Court to give permission for mercy killing.

(v). He has also admitted that he filed '18' cases on the file of the High Court of A.P. however, added that to defend himself he filed those cases.

20(i). Respondent / wife as R.W.1 stated about gifts presentation at the time of marriage, harassment and abuse in sexual life, birth of the child, problems, interference of the sister of the petitioner, deliberate and planned desertion of the respondent and her son by the petitioner, improper care, demand for additional dowry etc.

(ii). During cross examination, she has stated that till from 2015 till January, 2021 she did not file any petition for restitution of conjugal rights but filed the same as F.C.O.P.No.365 of 2021 in the year 2021. She can secure a job for her qualification. However, she has added that, as she has to take care of

her son, she is unable to attend a job. She is not interested to handing over the custody of her son to the husband. She has denied the suggestion that she has voluntarily deserted.

21. It is relevant to note here itself that the divorce is not sought on the ground of desertion. It is elicited during cross-examination that there was no dispute between respondent and her husband from the date of conceiving till delivery of the child. However, she has added that there was no care from her husband from the month of October and her mother came to the USA in the month last week of January or the first week of February, 2015. She has admitted that her husband taken her for regular medical check-ups and that her son is a premature boy. Since she was advised bed rest, she was immobile. Her husband was visiting the hospital, however, she has added that not every day and that her mother was taking care of the boy. She has added that the doctor detecting that her son is suffering from autism, but there is delay in development or growth. Her husband was enquiring about the health of her son. She has stated that she attended mediation centres in all three cases and that she has filed a memo before the Court that there is no need for counselling and mediation in F.C.O.P.No.365 of 2021. She has denied the suggestion that her cases are false.

22. From the oral evidence on both sides viz. P.W.1 and R.W.1, being husband and wife, no material is found to believe that the petitioner/husband was

subjected to cruelty sufficient to grant decree of divorce dissolving the marriage between the parties. Therefore the findings of the learned Judge, Family Court, in F.C.O.P.No.634 of 2017, dated 29.12.2021 do not warrant any interference. Point Nos.1 and 2 are answered accordingly.

Point No.3:-

23. In the result, the Appeal is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE BATTU DEVANAND

JUSTICE A.HARI HARANADHA SARMA

Date:04.02.2026
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THE HON'BLE SRI JUSTICE BATTU DEVANAND
&
THE HONOURABLE SRI JUSTICE A. HARI HARANADHA SARMA

FAMILY COURT APPEAL (FCA) NO:4/2022

Dt.04.02.2026

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