

TELANGANA HIGH COURT**Bench: Justice K. Lakshman and Smt. Justice K. Sujana****Date of Decision: 03.11.2023**

K_Anurupa_Hyd_

vs_

K_Rama_Krishna

Legislation:

Section 9, 13(1)(ia) and (ib) of the Hindu Marriage Act,

Section 498-A of the Indian Penal Code

Rule 6, 32 of the Family Court Rules,

Article 142 of the Constitution of India

Subject: Appeal against the dissolution of marriage by the Family Court on the grounds of cruelty and desertion. Appeal for restitution of conjugal rights dismissed by the Family Court.

Headnotes:

Family Court Appeal – Appeals against dissolution of marriage and denial of restitution of conjugal rights allowed – Erroneous application of law and misinterpretation of facts by the Family Court corrected – Marriage dissolution set aside, restitution of conjugal rights granted. [Para 38]

Cruelty and Desertion – Insufficient evidence to support claims of cruelty and desertion by the husband – Appeals allowed due to lack of concrete evidence. [Paras 20, 27, 34]

Judicial Conduct – Misconduct in legal proceedings by the husband's father, a judicial officer, using his position to influence the case – Consequences of such actions on the case outcome. [Paras 18-19, 25]

Evidence and Admissibility – Family Court's decision based on assumptions without substantial evidence – High Court finds in favor of the appellant (wife) based on evidence and readiness to reconcile. [Paras 21-22, 28-29]

Restitution of Conjugal Rights – Recognition of the wife's continuous efforts to rejoin the husband, leading to the allowance of her petition for restitution of conjugal rights. [Para 38]

Referred Cases:

- Kantilal G.Jain Vs. C.Sailaja MANU/AP/1615/2013
- Ganti Srinivas Vs. G.Vasanth MANU/AP/1456/2013
- Gurbux Singh Vs. Harminder Kaur (2010) 14 SCC 301
- S.Brahmanandam Vs. S.Rama Devi 2016(6) ALT 790 (DB)
- Rakesh Raman Vs. Kavita AIR Online 2023 SC 325

Representing Advocates:

For Appellant/Wife: Mr. Kowturu Pavan Kumar

For Respondent/Husband: Mr. Vedula Srinivas (Senior Counsel) representing
Smt. Vedula Chitrlekha

FAMILY COURT APPEAL Nos.75 AND 97 OF 2016

COMMON JUDGMENT : (Per Hon'ble Sri Justice K. Lakshman)

Lis involved in both the appeals and the parties are one and the same. Therefore, both the appeals were heard together and decided by way of this **common order.**

2. Heard Mr. Kowturu Pavan Kumar, learned counsel for the appellant/wife and Mr. Vedula Srinivas, learned senior counsel representing Smt. Vedula Chitrlekha, learned counsel appearing for the respondent.

3. Feeling aggrieved and dissatisfied with the common order dated 15.02.2016 passed in O.P.No.3 of 2012 and O.P.No.793 of 2011 by the Judge, Family Court, City Civil Court at Hyderabad, the wife preferred these two appeals. Facts of the case:-

4. The marriage of the appellant/wife with the respondent/ husband was solemnized on 10.06.2006 at Eluru West Godavari district as per Hindu rites and customs. It is an arranged marriage. They stayed together in Vengalrao Nagar, Hyderabad in June and July, 2006. After marriage, respondent/husband secured a good job in USA and as such in the month of July, 2006, he left for USA. The appellant/wife also joined the respondent/husband in USA in February, 2007. They blessed with a baby boy

on 15-12-2007 at Eluru. Both the appellant as well as respondent along with their son stayed in USA from May, 2008 to November, 2008. Thereafter, matrimonial disputes arose between them.

5. The respondent/husband had filed O.P.No.98 of 2009 which is re-numbered as O.P.No.1645 of 2010 against the appellant/wife seeking dissolution of marriage on the ground of cruelty and desertion. The same was dismissed on the ground that the respondent/husband did not sign petition himself in terms of Rule 6 of the Family Court Rules. Therefore, respondent/husband had filed O.P.No.3 of 2012 seeking dissolution of marriage on the ground of cruelty and desertion contending as follows:-

- i. The appellant /wife did not cooperate with him to join in USA and she insisted him to take up employment in India preferably in Hyderabad.
- ii. After much persuasion, she went to USA.
- iii. On 26.02.2007 she became pregnant. After confirmation of pregnancy, the attitude of the appellant/wife became very adamant and abnormal and she persisted him to travel to India against medical advise.
- iv. During October, 2007, she returned to India and delivered a male child at Eluru on 15.12.2007.
- v. On persuasion by respondent/husband and his parents, the appellant/wife along with her son again went to USA in November, 2008. Within a short period, she complained joint pains and returned to India in the month of November, 2008 and underwent treatment at Hyderabad. During that period, at the request of the appellant/husband, her son was taken by the respondent's parents to Nizamabad so that she would not be disturbed during her treatment.
- vi. Thereafter, though the appellant/wife fully recovered from the illness, there was no proper response from her about her plan to travel back to USA in spite of repeated request.

- vii. There was a total communication failure from the side of the appellant/wife. Even as the respondent was inquiring with the appellant/wife via e-mails to send her the air tickets, there was no reply from her. As such, having become vexed with the attitude of the appellant/wife, the respondent/ husband had got an OP filed in Nizamabad court for divorce.
- viii. In the intervening night of 7/8.10.2010, he came to New Delhi where he was detained by the immigration authorities at Indira Gandhi International Air Port and was confined in the Air Port Police Station and a Police Officer of Hyderabad, brought him to Women Police Station at CCS, Hyderabad on 10.10.2010.
- ix. Later he came to know that the wife had filed a police complaint alleging dowry harassment which was registered as a case in Cr.No.318 of 2010 on 27.05.2010 against the respondent/husband and his parents, brother and sister.
- x. At that time, his father was working as Additional District Judge, Asifabad, Adilabad district.
- xi. On 25.10.2010 the appellant/wife has sent a complaint to the Hon'ble Chief Justice of the then High Court of Andhra Pradesh against the father of the respondent/husband and as a result he was placed under suspension and an enquiry was ordered. Thus, respondent/husband and his entire family members were put to mental and physical harassment, besides the respondent/husband was put in jail.
- xii. The acts of the appellant/wife not only amount to cruelty and also desertion without justifiable reasons. 6. The appellant/wife filed counter admitting marriage etc., however, denying the allegations made against her, contended as follows:-
 - i. At the time of the marriage herself and respondent/husband were working as software Engineers at Hyderabad.

- ii. The respondent/husband and his parents forced her to resign from job. They did not even allow her to serve notice period as per the company rules.
- iii. With great difficulty, she went to USA where she lead her life miserably. After some time, she became pregnant.
- iv. Respondent/husband failed to provide medical aid during that time.
- v. She was not interested to come to India for delivery with an intention to support her husband financially. She obeyed his wish and came to India in the month of September, 2007 for delivery.
- vi. He always told her that she and her parents are not upto their range. After birth of the child, she reached Nizamabad on 17.02.2008 where respondent's father was working as District Judge. During her stay at Nizamabad, his parents insisted her to bring money, gold and silver articles from her father's retirement benefits.
- vii. In May, 2008, she went to USA along with her boy, thereafter, within 15 days, her husband went to Germany, leaving her and the boy at his sister's house in Connecticut.
- viii. In the month of July, 2008, his parents came to USA and stayed there for few months and tortured her mentally and physically. ix. On 28.09.2008, she was admitted in emergency hospital for knee operation and the parents of her husband left for India without staying in USA.
- x. Respondent/husband and his family members predicted that she would die with HIV etc., and warned her to hand over the child to them.
- xi. She was forced to come to India on 04.11.2008 and on 8.11.2008 her in-laws came to take the minor child. On 14.11.2009, her in-laws came to her for passport of the minor boy and threatened her to see her end as his father-in-law is a judge.
- xii. Her father-in-law, acting as GPA holder on behalf of her husband, filed a petition vide OP No.6 of 2010 before the learned Senior Civil Judge, Nizamabad for divorce and the same was transferred to the Family Court, Hyderabad and renumbered as OP No.1645 of 2010.

- xiii. She is always ready to join with the respondent/husband.
- xiv. She was forced to lodge a complaint against her husband and in-laws for the offence punishable under Section 498-A of IPC.
- xv. Respondent and his family members retained her original certificates and denied to return.
- xvi. Vexed with their attitude, she sent a complaint to the Hon'ble Chief Justice. Then her certificates were given to her in the Family Court.
- xvii. The appellant/wife also filed a petition vide O.P.No.793 of 2011 under Section 9 of the Hindu Marriage Act, seeking for restitution of conjugal rights.

7. To prove the contentions, respondent/husband has examined himself as P.W.1 and his father as P.W.2 and marked Exs.P.1 and P.2 documents. Whereas, appellant/wife has examined herself as R.W.1, her father as R.W.2 and family friend as R.W.3 and marked Exs.R.1 to R.8 documents.

8. On consideration of evidence both oral and documentary, vide common order dated 15.02.2016, learned Judge, Family Court, Hyderabad, allowed O.P.No.3 of 2012 filed by husband seeking dissolution of marriage dated 10.06.2006 between the parties. However, learned Judge, dismissed the petition vide O.P.No.793 of 2011 filed by the appellant/wife seeking restitution of conjugal rights. 9. Feeling aggrieved and dissatisfied with the said common order, appellant/wife preferred the present appeals.

10. Mr. Kowturu Pavan Kumar, learned counsel for the appellant/wife would contend that the respondent's father being judicial officer filed O.P.No.98 of 2009 in the Court where he was working by obtaining alleged General Power of Attorney (GPA) from his son. The same was dismissed to the learned Senior Civil Judge's Court, Bhodhan, where it was re-numbered as O.P.No.6 of 2010. The same was transferred to the Family Court, Hyderabad and renumbered as O.P.No.1645 of 2010. The same was dismissed on 21.09.2011 on the ground that the party has not signed as per

the Family Court Rules. The respondent/husband retained the original certificates of the appellant/wife. Therefore, she was constrained to send a complaint to the Chief Justice of the then High Court of Andhra Pradesh who placed the respondent/husband's father under suspension. After filing of the O.P. No.793 of 2011 under Section 9 of the Hindu Marriage Act, she has lodged a complaint with police who registered the same for the offence punishable under Section 498-A of IPC against the respondent/husband and his family members. In fact, she was forced to lodge such a complaint. He would further submit that wife is ready to join with the husband. The respondent failed to prove desertion and cruelty by producing sure and safe evidence.

Without considering the said aspects, the Family Court allowed the petition vide O.P.No.3 of 2012 filed by the respondent/husband seeking dissolution of marriage and dismissed the petition vide O.P.No.793 of 2011 filed by the appellant/wife seeking restitution of conjugal rights. With the said submissions, he sought to allow both the appeals.

11. Whereas, Sri Vedula Srinivas, learned Senior counsel, representing Smt Vedula Chitralkha, learned counsel for the respondent/husband would contend that the Family Court on consideration of entire evidence both oral and documentary and also considering the fact that the marriage between the parties is irretrievably broken, granted divorce and dismissed the application filed by the wife seeking restitution of conjugal rights. There is no error in it. Even in the impugned order, there is a specific finding that there is no scope for re-union of the parties and the marriage is irretrievably broken. With the said submissions, he sought to dismiss both the appeals.

12. From the aforesaid discussion and perusal of the record would reveal the following undisputed facts:-

- i. The marriage of the parties was solemnized on 10.06.2006 as per the Hindu rites and customs and it is an arranged marriage.
- ii. Before marriage, both of them were working as software Engineers.
- iii. Husband left for USA in July, 2006. Thereafter, appellant/wife joined him in USA in February, 2007.
- iv. Before that they stayed for two months in Vengalraonagar, Hyderabad.
- v. She became pregnant in USA.
- vi. She came back to India and blessed with a son on 15.12.2007 at Eluru.
- vii. Thereafter, she went to USA along with the boy stayed there from May, 2008 to November, 2008.
- viii. The respondent's father was a judicial officer. He had filed O.P.No.98 of 2009 seeking dissolution of marriage on the ground of cruelty and desertion in the Court of Principal Senior Civil Judge, Nizamabad to which he is a Presiding Officer by obtaining GPA from his son. The same was transferred to the learned Senior Civil Judge, Bhodhan, Nizamabad and renumbered as O.P.No.6 of 2010. The said O.P. was again transferred to Family Court, Hyderabad and renumbered as O.P.No.1645 of 2010.
- ix. He has filed an application stating that he not pressing the ground of desertion in the said O.P. However, vide order dated 21.09.2011, the said OP was dismissed as not maintainable since the respondent/husband did not sign the petition by himself in terms of Rule 6 of Family Court Rules,2005.
- x. Wife had filed a petition vide O.P.No.793 of 2011 under Section 9 of the Hindu Marriage Act, seeking restitution of conjugal rights.
- xi. She has also filed a complaint against respondent/husband and his parents and the same was registered as a case in Cr.No.318 of 2010 on 07.05.2010.
- xii. She has also lodged a complaint with the Chief Justice of the then High Court of Andhra Pradesh against the father of the respondent/husband. He was

placed under suspension and enquiry was conducted and the charges leveled against him were not proved. Thus, he was exonerated.

13. According to the respondent/husband, the criminal activities of the appellant/wife are as follows:-

- i. The appellant/wife harassed the respondent/husband to take up employment in India preferably in Hyderabad.
- ii. She has not shown inclination to travel USA to join company of the husband.
- iii. After confirmation of pregnancy, her attitude became more adamant and abnormal.
- iv. She persisted with her wish to travel India even against medical advice.
- v. She joined husband in USA in May, 2008 and then she complained joint pains, returned to India and underwent treatment.
- vi. Despite sending mails by the respondent/husband to come to USA, there was no response from her.
- vii. He was arrested in Delhi Airport on the complaint lodged by her. viii. She has also lodged a complaint against his parents, sister and brother.
- ix. She has sent a complaint against his father with the Chief Justice of the then High Court of Andhra Pradesh who placed the father of her husband under suspension and initiated enquiry.
- x. Thus, according to the respondent/husband, the appellant/wife subjected him and his parents to cruelty and deserted him.

14. In view of the allegations and counter allegations, it is relevant to note that in the petition filed by the husband, he has categorically stated that despite sending e-mails, the appellant/wife failed to respond and there was no reply. Having vexed with the attitude of the appellant/wife, he got filed O.P.No.3 of 2012 seeking divorce. Thus, he failed to explain or prove as to the steps taken by him to take the appellant to his company. He has not sent

any notice asking her to join his company. He did not even filed any application under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights.

15. On the other hand, he has filed an application vide O.P.No.98 of 2009 on the file of the Principal Senior Civil Judge, Nizamabad, where his father was working as Presiding Officer, by giving GPA to his father. The said OP was filed against the appellant/wife seeking dissolution of marriage on the grounds of cruelty as well as desertion. Thereafter, an application was filed by his father, stating that he is not pressing the ground of desertion. However, said O.P. was transferred to the Senior Civil Judge, Bhodhan, Nizamabad, and the same was re-numbered as O.P.No.6 of 2010. Later it was transferred to the Family Court, Hyderabad and renumbered as O.P.No.1645 of 2010. The same was dismissed on the ground that the respondent/husband did not sign the petition himself in terms of Rule 6 of the Family Court Rules.

16. In this regard, it is relevant to refer certain admissions made by his father (P.W.2) during cross-examination:-

“It is true that the earlier OP was dismissed as it was not signed by the respondent/husband. It is true that I had put an application to withdraw the ground of desertion from the main case and I signed on I.A.No.____/2010 in O.P.No.1654 of 2010. It is true that the OP No.1645 of 2010 was initially instituted in Principal Senior Civil Judge, Nizamabad, thereafter transferred to Bodhan and finally to Hyderabad. It is true that initially the OP No.1645 of 2010 is filed before Principal Senior civil Judge’s Court to which I was Presiding. I do not know as to whether institution of case when I am having interest shall not be instituted in the court where I am Presiding as per the Civil Services Conduct Rules. Immediately after registering main OP, I addressed a letter to the PDJ, Nizamabad by requesting him to transfer the main OP to any other court as I am having interest in the matter. The check and put up of the main OP was written by the Superintendent of PSJ court and I ordered for the registration of OP on the basis of his submission made therein. On the date of institution of said

OP, I presided over the court. As per my knowledge the separate affidavit and petition is not necessary to file as per Rule 32 of GPA Civil Rules of Practice.”

17. He has further admitted during cross-examination as follows:-

“It is true that 498-A case, MC case were filed by respondent subsequent to institution of OP No.1645 of 2010. It is true that the respondent always tried to pacify the dispute with my son and resume her marital life with my son but myself and my wife are not agreeing for the same. It is true that the petition given against me by respondent to Hon’ble Chief Justice of AP High Court is also subsequent to filing of the OP No.1645 of 2010. Witness volunteers that she has given petition to Hon’ble the Chief Justice, High Court of AP on 25.10.2010 before the meeting conducted at his brother Mr.pradeep’s House. Myself and my wife are not ready to take back the respondent into her family as the P.W.1 is against for receiving her. “

18. The aforesaid facts would reveal that the respondent husband instead of taking steps to take his wife to his company either by way of approaching elders and well wishers or by filing proper applications seeking restitution of conjugal rights, but filed an application seeking dissolution of marriage on the ground of cruelty and desertion. Therefore, he executed GPA i.e. Ex.R.5 dated

11.07.2009 authorizing his father to file petition. In fact, the said OP was filed in the court where his father was Presiding.

19. According to the appellant/wife, the respondent/husband and his parents retained her original certificates which made her to submit a complaint to the Hon’ble the Chief Justice of the then High Court of Andhra Pradesh to take action against the respondent’s father for abuse of his official position. On filing of the said complaint only, they have returned her original certificates in Family court during the pendency of the aforesaid proceedings. There is no rebuttal evidence by the respondent/husband on the same.

20. The aforesaid facts would reveal the intention of respondent/husband in obtaining divorce from respondent either hook or crook. In the said course of action, he has filed the aforesaid OP by sending GPA to his father who did not file it properly. Therefore, he cannot blame the appellant/wife for his own mistake. Thus, the respondent/husband failed to prove cruelty and desertion by producing sure, safe and relevant evidence.

21. Learned Family Court without considering the said aspects, in paragraph No.22 of the impugned order held that while there is no evidence regarding the alleged demand for additional dowry etc., there is reason to believe that R.W.1 was not readily prepared to join the company of P.W.1 in USA. No doubt, it is the aspiration of an average middle class person to get a highly paid job and to settle well in life and for this purpose a good job in the USA is considered as a desirable option. In this context, the anxiety of PW1 to remain in USA, is understandable. Any non-cooperation on the part of RW1 regarding this aspect would have seriously dampened the enthusiasm of P.W.1.

22. The said finding of the Family Court is without any basis, contrary to the record evidence. The said finding is on presumptions and assumptions, Family Court has to decide O.P.No.3 of 2012 filed by the husband seeking dissolution of marriage against wife on the grounds of cruelty and desertion basing on the evidence both oral and documentary and material available on record. The Family court cannot go beyond the same.

23. In paragraph No.23 of the impugned order, the Family Court held that however, minor differences of opinion which should not be allowed to escalate beyond proportion, but RW1 has chosen to file a number of cases against PW1 and his family members and she had got even PW1 arrested at the Airport. The institution of marriage is built on mutual trust and sentiments

and positive feelings for each other. Once this structure is disturbed, it would be a difficult task to heal the emotional wounds and to rebuild trust. But if one of the parties involved resorts to filing a number of cases against the other parties in a vengeful manner, there would hardly be any scope for reapproachment between them.

24. The said finding is contrary to record and evidence. As discussed supra, it is the husband who filed the aforesaid OP No.98 of 2009 before the Court in which his father was working. He did not take any steps to get the appellant/wife to his company either by approaching elders and well wishers or initiating mediation or conciliation proceedings or by way of filing appropriate application under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights. He has straightaway filed the said OP seeking dissolution of marriage on the ground of cruelty and desertion which he has failed to prove. In fact, he failed to file the said OP in accordance with law, more particularly by signing himself in terms of Rule 6 of Family Court Rules. Therefore, the same was dismissed vide order dated 21.09.2011. He has filed the present OP No.3 of 2012 seeking dissolution of marriage against the appellant/wife on the ground of cruelty and desertion. In fact, as admitted by his father/ P.W.2 that his father has filed application stating that he is not pressing ground of desertion in the said OP.

25. As discussed supra, P.W.2 categorically admitted that the complaint lodged by R.W.1 was on 27.05.2010 i.e. after filing of O.P.No.98 of 2009, she has filed MC No.193 of 2010 under Section 125 of Cr.P.C. seeking maintenance after filing of the said OP. Except, the aforesaid two cases, she has not filed any other case. Even then, the Family Court in paragraph No.23, gave a finding that she has filed number of cases against the respondent/husband and his family members which is factually incorrect. The

arrest of the respondent/husband at Delhi Airport is subsequent to the filing of the said OP. Therefore, the respondent/husband cannot blame wife for his own wrong.

26. However, as discussed supra, the respondent/husband has to prove cruelty and desertion by producing sure, safe and relevant evidence. To prove his case, the respondent/husband has examined himself as P.W.1 and his father as P.W.2. He has filed Ex.P.1 wedding card and P.2- marriage photograph. Except that, he has not filed any other document or examined any independent witness.

27. Whereas, to prove the allegations made by the respondent/ husband are false, the appellant/wife had examined herself as R.W.1, her father as R.W.2 and family friend as R.W.3. It is apt to note that the respondent did not elicit anything during cross-examination of R.Ws.1 to 3 with regard to cruelty and desertion. Thus, respondent/husband utterly failed to prove both cruelty and desertion seeking dissolution of marriage. The finding of the trial Court that R.W.1 herself who had precipitated the issue by initially failing to cooperate with P.w.1 in pursuing his career in USA and subsequently by filing a number of cases against P.w.1 and his family members is contrary to record and evidence. The said finding is only on assumptions and presumptions but not basing on the record.

28. The finding of the Family Court in paragraph No.25 of the impugned order that the marriage between the P.W.1 and R.W.1 has become unworkable. There being not even a remote possibility of reapproachment, the proper and logical step forward is to formalize such deep schism of hearts by dissolution of their marriage to enable each of them to start afresh in life.

29. While giving such finding, the Family Court ignored the importance of family, conjugal rights of the parties and also the welfare of the child. The

Family Court failed to consider the contention of the wife that she is always ready to join the company of the husband. She is a software engineer. She was working at Hyderabad before marriage. She was forced to resign her job after joining the husband at USA. She never lodged any complaint against her husband and his family members. She has lodged a complaint only on receipt of notice in O.P.No.98 of 2009. She has filed application under Section 125 of Cr.P.C. vide MC No.195 of 2011 seeking maintenance. Respondent/husband and his father retained her original certificates. O.P.No.98 of 2009 was filed in the court in which his father was Presiding. His father endorsed on the said OP to register. It is a judicial order. Therefore, she was compelled to lodge a complaint with Hon'ble the chief Justice. Then only her original certificates were returned in the Family Court. Therefore, the said findings of the Family Court is perverse and contrary to record. This Court vide order dated 21.04.2016 granted interim suspension of the impugned order dated 15.02.2016 in O.P.No.3 of 2012. This Court also conducted mediation and the same was unsuccessful. Considering the age of the parties and other aspects, this Court also interacted with the appellant and respondent and their son Master Gowtham.

30. Sri Kowturu Pavan Kumar, learned counsel for the appellant/wife placed reliance on the principle laid down by a Division bench of this Court in **Kantilal G.Jain Vs. C.Sailaja**¹, wherein it was held that the appellant therein i.e. Kantilal G.Jain failed to prove that unfounded allegations are made against him. Mere filing of complaint under Section 498-A of IPC cannot be treated as making unfounded allegations. Acrimony between the parties is clear and the evidence on record discloses that many averments of the appellant are not true. If every complaint filed under Section 498-A of

¹ MANU/AP/1615/2013

IPC is to be treated as an act of cruelty, the easiest way for a husband to get divorce from his wife would be to cause harassment leading to filing a complaint under Section 498-A of IPC and then to file an OP under Section 13(1)(ia) and (ib) of the Act, citing the filing of complaint as an act of cruelty.

31. We respectfully agree that the view taken by the Division Bench. Moreover, in the present case, the appellant/wife lodged a complaint against the respondent/husband on receipt of notice in the OP filed by him seeking dissolution of marriage on the grounds of cruelty and desertion.

32. He has also placed reliance on the principle laid down by the Division bench in **Ganti Srinivas Vs. G.Vasantha**², wherein it was held that the ground of cruelty, in the instant case, stands on a different footing. The developments that have taken place, particularly after the appellant left for Canada, in search of better employment, disclose that the appellant therein and his family members, were subjected to harassment and cruelty on account of institution of various proceedings.. All the criminal cases instituted by the respondent ended in acquittal. Considering the said facts, the Division bench held that institution of criminal cases, by a wife, against the husband and his family members, would , by itself, constitute cruelty, particularly when it ends up in acquittal. On the examination of the said facts, the Division Bench held that to constitute ground of cruelty on the part of one of the spouse towards another, it is not necessary that there must be physical altercations, or assaults.

33. As discussed supra, in the present case, the respondent failed to prove cruelty as well as desertion by producing sure, safe and relevant evidence. At the cost o repetition, it is relevant to note that the appellant/wife

² MANU/AP/1456/2013

has lodged a complaint after respondent/husband filing applications seeking dissolution of marriage on the ground of cruelty and desertion.

34. The Hon'ble Apex Court in **Gurbux Singh Vs. Harminder Kaur**³ held that the parties who alleges cruelty and desertion shall prove the same by producing relevant evidence. But in the present case, the respondent failed to prove the same.

35. Whereas, Sri Vedula Srinivas, learned Senior counsel placing reliance on the principle laid down by the Division Bench of the High Court of Judicature at Hyderabad in **S.Brahmanandam Vs. S.Rama Devi**⁴ and on the judgment of the Division Bench of the Apex Court in **Rakesh Raman Vs. Kavita**⁵, would submit that the long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the Act. In the present case also, there was no cohabitation between the parties since long time. Therefore, the marriage is irretrievably broken.

36. As stated supra, the judgment in **Rakesh Raman** (supra) is under Article 142 of the Constitution of India. Whereas, in **S.Brahmanandam** (supra), the facts are altogether different. In the present case, as discussed supra, the respondent/husband himself filed petition seeking dissolution of marriage on the ground of cruelty and desertion without taking any steps to get his wife to join his company either by resorting to legal proceedings or mediation or conciliation etc. She has lodged a complaint after receipt of notice in the said O.P. and on retaining the original certificates. Thus, respondent/ husband cannot blame his wife. Therefore, the facts in the said

³ (2010) 14 SCC 301

⁴ 2016(6) ALT 790 (DB)

⁵ AIR Online 2023 SC 325

case are different to the facts of the case on hand. Even the interaction by this Court with the parties and mediation proceedings initiated by this Court were unsuccessful.

37. Viewed from any angle, these two appeals are liable to be allowed.

38. In view of the above discussion, these two appeals are allowed. The common order dated 15.02.2016 passed in O.P.No.3 of 2012 and O.P.No.793 of 2011 by the Judge, Family Court, City Civil Court at Hyderabad, is set aside. O.P.No.3 of 2012 is dismissed. O.P.No.793 of 2011 is allowed and respondent/husband is directed to join the company of the appellant within one month from the date of receipt of copy this order. Consequently, miscellaneous petitions, if any, pending in these appeals shall stand closed.

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