

Gudivada Seshagiri Rao vs Gudivada Ashalatha on 7 February, 2025

Author: B.R. Gavai

Bench: B.R. Gavai

2025 INSC 195

Non-reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. OF 2025
(@ SPECIAL LEAVE PETITION (CRL.) NOS. 6954-6955 of 2023)

Gudivada Seshagiri Rao		...Appellant
	-Versus-	
Gudivada Ashalatha & Anr.		...Respondents
	WITH	

CIVIL APPEAL NO. OF 2025
(@ SPECIAL LEAVE PETITION (C) NO. 1555 of 2024)

JUDGMENT

K. VINOD CHANDRAN, J.

Leave granted.

2. The appellant is the husband and the respondent is the wife, who have spent a fair share of their life fighting in courts. Allegations and counter-allegations galore, are raised despite the fact that they have had a matrimonial life for just about four months. One of the appeals is filed against the common order in the two Criminal 09:53:14 IST Reason:

Revision Petitions filed before the High Court against the order granting maintenance of Rs. 10,000/- to the wife. The husband challenged the grant while the wife sought enhancement, to double the amount in the revisions filed. After enhancement in the revision filed by the wife, the maintenance awarded stood at Rs. 15,000/- per month. The other appeal is against the order of remand made by the High Court, from an order rejecting the prayer of the husband for a divorce on the ground of desertion and cruelty.

3. The High Court in the appeal from the order rejecting divorce, framed two issues for

consideration. First, whether the trial court was in error in treating the divorce petition as one filed on the ground only of desertion and not on the ground of cruelty and then, whether the trial court erred in finding the marriage between the appellant and the respondent as one performed under Christian customs and rites; thus, making inapplicable the provisions of the Hindu Marriage Act, 1955, under which the Divorce Petition was filed. The High Court found that the trial court seriously erred in considering only the case of desertion put forth by the husband and rejecting the claim for divorce; while glossing over the ground of cruelty. It was held that mere failure to prove desertion cannot be taken as a failure to prove the ground of cruelty. On the question of the marriage having been performed as per Christian rites, it was found that the trial court egregiously misdirected itself in having considered an averment in the bail application; that the husband wanted to be released on bail prior to Christmas, while ignoring the oral evidence proffered by the husband and the caste certificate produced, as also the document indicating the auspicious time for the marriage as prepared by a Purohit, which documents clearly proved the fact that the husband was a Hindu. That the wife is a Hindu is not disputed at all. The High Court hence ordered a remand setting aside the Judgment and Decree rejecting the HMOP providing a further opportunity to the parties to adduce evidence on the two points on which the trial court order was set aside.

4. On facts, suffice it to notice that the marriage between the parties happened, on 27.05.1999 and soon thereafter the couple travelled to the husband's place of work at Assam. As we notice from the allegations and counter allegations made; regarding what transpired prior to the marriage and after a brief tumultuous period of four months, the couple separated. On their separation, they had different versions; with the husband claiming that the wife left him abruptly on 01.11.1999 and the wife asserting that the husband unceremoniously evicted her from the matrimonial home on 31.10.1999. The fact remains that they have been separated from then, after which commenced the series of litigation. As of now, both have passed their prime and we were of the opinion that there should be a quietus in the matter which would also release both the parties from the trauma of an agonizing marriage; which was a non-starter.

5. We were of the opinion that a quietus would be possible only by severing the marriage ties but at the same time ensuring that the wife, who was in an employment before marriage and presumably left it to move out with her husband to his work place, is not left in the lurch. We are fortified in this view by *Shilpa Sailesh Vs. Varun Sreenivasan*¹ which expounded on the ambit and scope of Article 142 of the Constitution of India, which enables 'complete justice' in a 'cause or matter', in relation to matrimonial matters; specifically, the provision to sever marital ties on mutual consent under the Hindu Marriage Act. The legislative intent behind incorporating sub-section (2) to Section 13-B of the Hindu Marriage Act, 1955 was found, to enable time to the parties to introspect and consider their decision to separate, before a second motion is moved; when a decree of divorce is sought on a joint petition filed by the parties. The Constitutional Bench noticed cases of exceptional hardship where after some years of acrimonious litigations and prolonged suffering, parties [2023] 5 S.C.R. 165 jointly pray for dissolution of marriage and seek a waiver of the need to make a second motion; where it could be allowed when the divorce is inevitable on account of irreconcilable differences evident from the allegations and aspersions made against each other and in certain cases by reason of the multiple litigations making the continuation of the marital relationship an impossibility. The said finding was on the powers of the Court in a joint application for divorce on mutual consent.

6. The Bench also dwelt upon the question whether Article 142 of the Constitution of India could be invoked, even upon the prayer of one of the spouses, when the Court is satisfied that there is complete and irretrievable breakdown of marriage notwithstanding the opposition to a divorce by the other spouse. It was held that though grant of divorce on the ground of irretrievable breakdown of marriage is not a matter of right, but a discretionary remedy which has to be exercised with great care and caution, keeping in mind several factors ensuring that 'complete justice' is done to both parties. Though the Bench refused to codify the various factors, which could curtail the exercise of jurisdiction, sufficient guidelines have been laid down to invoke the powers under Article 142 to do 'complete justice' to both the parties when the Court is fully convinced and satisfied that the marriage is totally 'unworkable, emotionally dead and beyond salvation' [sic].

7. We have considered the matter in the light of the observations made by the Constitution Bench. In the present case the marriage was held way back in the year 1999 and the couple remained together for only about four months. Long separation has not resulted in an attitude of 'forget and forgive'; but on the contrary has fueled into further acrimony. Though living apart, the bitterness has continued and escalated to spread over in the form of litigations. There are no children involved, fortunately, and both the parties are educated. The husband is working in a public sector undertaking and the wife though unemployed is a post graduate. We cannot but notice that despite her educational qualification, it is too late in life to establish herself in a profession and employment to ensure a decent livelihood. We are of the opinion, looking at the facts of the case and on a bare reading of the allegations and counter allegations that come forth in the pleadings, that there is no salvation possible and the relationship is practically dead and emotionally irretrievable. We are only concerned with providing adequate alimony for the wife to ensure that the wife is not left to fend for herself and both parties are not saddled again with the existing or further litigations. We, hence, on the totality of the circumstances direct that the parties be granted divorce on grounds of irretrievable breakdown of marriage; but subject to the condition that the appellant husband pays an amount of Rs.25,00,000 (Rupees Twenty Five lacs only) within a period of six months from today. The amount of Rs.2,00,000/- (Rupees Two lacs only) deposited before this Court as per order issued on 23.01.2024 in Civil Appeal No._____ of 2025@Special Leave Petition (Civil) No.1555/2024 shall be over and above Rs.25,00,000 (Rupees Twenty Five lacs only) awarded to the respondent-wife and she shall be entitled to withdraw the same with interest accrued, immediately. On the further payment of Rs.25,00,000 (Rupees Twenty Five lacs only), there shall be effective a divorce between the parties, on the grounds stated hereinabove and either of the spouses would be entitled to produce the aforesaid judgment with proof of payment of the directed amounts before any court before which either criminal or civil proceedings are pending, in relation to the marriage, so as to bring a quietus to the same; which the concerned court shall direct to be closed on the settlement directed by this Court.

8. We dispose of the appeals with the above directions setting aside both the impugned orders. Though the matters are disposed of, the matters shall be placed before the Court after six months to ensure compliance of the orders passed by us.

9. Pending application(s), if any, shall stand disposed of.

.....,J.

[B.R. GAVAI]J.

[K. VINOD CHANDRAN] NEW DELHI;

FEBRUARY 07, 2025.