

Andhra High Court

Kanchanapalli Lalithakumari vs Kanchanapalli Ramaprasada Rao on 20 August, 1991

Equivalent citations: 1992 (2) ALT 631

Author: D J Raju

Bench: U Waghay, D J Raju

JUDGMENT D.J. Jagannadha Raju, J.

1. This is an appeal filed against the judgment and decree in O.P.No. 490 of 1982 dated 8th March, 1988, on the file of the II Additional Subordinate Judge, Vijayawada. The respondent-husband filed the O.P. for divorce on the ground of cruelty under Section 13(1)(ia) of the Hindu Marriage Act (hereinafter called 'the Act'). The wife opposed the petition and she alleged that various allegations in the petition are false and she was never guilty of cruelty to the husband. On the other hand, the husband was guilty of cruelty towards her. She claims that she was harassed and she was fleeced of money and they have not been living apart and even after the filing of the O.P., the husband has been visiting her.

2. The court, after elaborate consideration, came to the conclusion that the wife is guilty of cruelty both on the basis of the allegations made in the petition which were spoken to by P.W.1 and his father P.W.2 and also on the basis of unfounded, baseless and reckless allegations made in the written statement filed by the wife and the subsequent events.

3. In this appeal Sri Noushad Ali, the learned counsel appearing for the appellant-wife contends that the trial court committed a grave mistake in taking into consideration the subsequent events and the allegations made in the written statement/counter. He contends that as allegations made in a counter or written statement are subsequent events, they do not give rise to a cause of action to seek divorce. He contends that the facts should precede the initiation of the proceedings and should form part of the cause of action. In the very nature of things, the allegations made subsequent to the filing of the O.P. and the subsequent events cannot be taken into consideration. They cannot be a ground for holding that the wife is guilty of cruelty. He also contends that as regards the allegations made in the written statement or counter, unless a specific issue is framed as to whether those allegations would amount to cruelty or not, those allegations by themselves cannot justify a decree for divorce. He contends that there should be evidence on record to show that the husband felt that these allegations have mentally affected him and that he felt that he was treated cruelly. He placed reliance upon a number of decisions to show that allegations in a counter and written statement cannot be the basis for granting a decree for divorce.

4. On behalf of the respondent-husband, Mr. Harnath contends that this is an unfortunate case where from the time of marriage, the husband was being illtreated, humiliated and subjected to all sorts of cruelty by the wife. The wife's behaviour and cruelty to the husband appear to stem out of her economically superior position and her being far senior to the husband in age. He contends that the evidence on record fully establishes the various instances of humiliation and cruel treatment. He further contends that the subsequent conduct and the wild, baseless and scandalous allegations made in the written statement which now stand unproved by themselves constitute cruelty to the husband and such false and malicious allegations which are not substantiated would ipso facto

entitle the husband to a decree for divorce on the ground of cruelty. Mr. Haranath contends that the evidence on record establishes that the parties are living separately from April, 1982 and there is absolutely no possibility of their living together. When there is no scope for reconciliation and their coming together, it is futile on the part of the wife to file this appeal and try to compel the husband to live with her. Judged from a broad human angle on the facts of the case, their living together would be nothing short of virtual hell on earth. The court exercising matrimonial jurisdiction should take a comprehensive view of things and on the facts of the case, the decree for divorce has necessarily to be confirmed.

5. The points for consideration in this appeal are:

(1) Whether the evidence on record establishes that the wife is guilty of cruelty towards the petitioner-husband.

(2) Whether the trial court is justified in taking into consideration the subsequent events and the malicious, wild and scandalous allegations made in the written statement as a basis for granting a decree for divorce on grounds of cruelty.

6. Point No. 2: There is a certain amount of cleavage of judicial opinion as to whether the allegations in a written statement can form the basis for granting a decree for divorce. If we examine the case law in the chronological order, we find that courts have taken unproved malicious, scandalous and reckless Allegations made in the written statement as a basis for granting relief in a O.P. filed on the ground of cruelty. The earliest decision is *Gurbachan Kaur v. Swaran Singh*, . In that decision it is found that when the husband made a false allegation against his newly wedded wife that she was pregnant and even turned her out of his house alleging that she was unchaste the wife felt provoked and made a counter-allegation of unchastity against the husband was considered by the trial court as amounting to an act of cruelty to warrant a decree for dissolution of the marriage. In such a background, the High Court observed at page 259 as follows:

"Therefore, disagreeing with the courts below, I hold that the allegation made by the appellant in the written statement that the respondent was having adulterous relations with his sister-in-law could not, in the circumstances of the case, constitute an act of cruelty to warrant a decree for dissolution of marriage being passed against her."

In the present case, the allegations in the written statement are not made on the basis of any provocation caused by the husband. They are the statements deliberately made and made in a wild and reckless manner and very scandalous allegations are made against the husband. Therefore, the decision in *Gurbachan Kaur v. Swaran Singh* (1 supra) is distinguishable on facts and the principle laid down in that decision is not of any help to the appellant in the present case.

7. The decision in *Sulochana v. Ram Kumar*, AIR 1978 Allahabad 78 deals with a case where initially the petition was not filed for divorce on the ground of cruelty but in the replication filed after the allegations were made in the written statement, the husband prayed for a decree for divorce on the ground of cruelty on the basis that the allegations in the written statement amounted to cruelty.

Referring to the rules made by the Allahabad High Court under the Hindu Marriage and Divorce Rules of 1956 and referring to the Form No. 8 in the schedule to the Indian Divorce Act, the court held at page 82 as follows:

"In view, however, of the provisions noticed earlier by me, it has to be held that the observation that an allegation made by the wife in the written statement that the husband was having adulterous relations with his sister-in-law could not constitute an act of cruelty to warrant a decree being passed against her, represents the correct legal position."

The court found that under the law and the rules prevailing in the Allahabad High Court, the facts on which the claim to relief is founded shall be stated in every petition distinctly and the rules contemplate that a relief cannot be granted merely on the basis of allegations contained in the replication. This decision of the single judge is mostly based upon the rules framed by the Allahabad High Court and the forms prescribed for petitions for judicial separation and divorce. This decision is not of help for solving the controversy in the present case.

8. The decision in *Maya v. Brij Nath*, AIR 1982 Delhi 240 lays down that acts of cruelty should be specifically pleaded and no amount of evidence can be looked into on a plea which was never pleaded. The court also laid down as to what amounts to cruelty under Section 13(1)(ia) of the Act as follows:

"Cruelty has not been defined in the Act. But it is now well settled that the conduct should be grave and weighty so as to make cohabitation virtually unendurable. It must be more serious than the ordinary wear and tear of marriage. The cumulative conduct taking into consideration the circumstances and the background of the parties has to be examined to reach a conclusion whether the act amounts to cruelty."

After dealing with the various instances of alleged cruelty, the court came to the following conclusion:

"In any case the acts pleaded are ordinary acts of wear and tear of married life. I hold that the above alleged acts of cruelty pleaded by the respondent were not proved."

In paragraph 9, the court observed as follows:

"The wife in her written statement had pleaded that her mother-in-law poisoned her. The trial court having reached the conclusion that the pleaded acts of cruelty were not proved ought to have rejected the ground of cruelty as the basis of divorce. Acts of cruelty have to be specifically pleaded. The husband never pleaded the said acts of cruelty, It is well known that no amount of evidence can be looked into on a plea which was never pleaded. These questions no doubt were put in cross-examination but there is a limit for putting questions in cross-examination."

The court found fault with the trial court permitting various questions which were not relevant. On facts, that decision is distinguishable from the facts of our case. In the case on hand, the court found

that the various allegations pleaded in the petition have been established by the evidence of P.Ws.1 and 2. Hence the principle laid down in that decision has no application to the facts of our case.

9. The most important decision is the one reported in *Paras Ram v. Kamlesh*, AIR 1982 Punjab & Haryana 60.

A Division Bench of the Punjab High Court observed in paragraph 6 as follows:

"The crucial distinction between allegation of adultery made prior to the filing of the case of aliunde or in collateral proceedings and such an allegation made by way of defence in the written statement seems to have been totally lost sight of. As already noticed there is no manner of doubt that an allegation of adultery made prior to the filing of the petition and put in issue and found to be false would constitute legal cruelty. However, a mere allegation by way of a defence in the written statement irrespective of its falsity or otherwise is not in the same category unless, of course, such an issue is specifically put to trial and the firm finding arrived at whether the allegation was false or substantiated."

The Division Bench further observed in paragraph 11 as follows:

"On principle, it appears to us that countenancing such an extreme position may well work great public mischief. In substance, it would imply that the defending spouse could raise, the foulest allegation of adultery or other matrimonial offences against the other without any fear of any retribution."

The court further observed in paragraph 12 as follows:

"The law seems to be settled that an earlier or collateral allegation of adultery, if false, would immediately give a cause of action to the offended spouse. If that be so, a second petition would obviously lie by a spouse against whom false allegation of adultery has been raised in an earlier petition. Indeed this position was not very fairly controverted by the learned counsel for the respondent. If in a second petition the allegation of adultery made in the earlier could be made as a cause of action, one fails to see why such an accusation, in the written statement in the same proceeding should be on a different footing. Subscribing to the view canvassed on behalf of the respondent can only tend to lead to a multiplicity of proceedings which it is always the intent of the law to avoid. I am, therefore, unable to subscribe to any abstract theory of a complete privilege to the allegation of adultery made in a written statement.....It is manifest that in order to succeed on this ground the petitioner must establish the falsity of such an allegation. The burden of proof, however, being a negative burden would in the initial stage be a light one. It would, therefore, become necessary that the petitioner in such a situation would have to amend the petition and plead the false allegation of adultery amounting to cruelty as a specific ground for matrimonial relief. It is only when this has been made a ground of attack that the petitioner can possibly take advantage of such an allegation, if proved false. Unless the truth or falsity of such allegation made in the written statement is put to trial in the manner aforesaid and it is established one way or the other no legal consequences can flow therefrom for the purpose of Section 13(1)(ia) of the Act.....It is elementary

that in order to succeed in a petition the burden of establishing cruelty Under Section 13(1)(ia) is on the spouse who alleges the same. However, in a case of the present nature where such an allegation has been made in defence in the written statement it would be a negative burden which can easily be discharged by merely averring that the allegation of adultery is false. It would then be for the spouse alleging the adultery to substantiate the same."

In our considered opinion, the principle laid down by this Division Bench decision would apply to the facts of our case. Once the allegations of adultery made in the written statement are found to be false, the petitioner is entitled to relief even if the allegations are for the first time made only in the written statement. It should also be remembered that in the present case there are various allegations which are of a very scandalous nature and the appellant-wife never made any effort to substantiate those allegations.

10. The decision in Savitri v. Mulchand, lays down as follows:

"It being well settled by authority that, false defamatory, scandalous, malicious, baseless and unproved allegations made against the spouse in letters, and alleged complaints to superiors, or person's in authority, are cruelty; is there any reason why these judgments should not be applicable to the false, scandalous, malicious, baseless and unproved assertions made in the written statements?"

The court answered the points raised in paragraph 31 in paragraph 39 of the judgment at page 59. After observing that matrimonial proceedings need be decided expeditiously and that matrimonial litigation be shortened and multiplicity of proceedings of matrimonial nature be prevented, the court held as follows:

"Both of the abovesaid reasons are good reasons for permitting any party to matrimonial proceedings to rely upon the averments contained in the pleadings to establish whether one party is guilty of cruelty towards the other of them. For this reason, I am of the view that the assertions made in para 8 of the written statement can also be looked into for the purpose of determining whether the appellant wife has been guilty of cruelty-to the respondent husband. The appellant respondent wife, it is clear from Ex.P.1, is used to hurling abuses on the respondent husband, using foul and filthy language and has persistently been abusing the respondent husband of having committed adultery with persons known or unknown."

The court ultimately found that the allegations made are false and no effort is made to substantiate them and hence relying upon false and unsubstantiated allegations of the written statement, relief was granted to the husband.

11. The decision in Nirmala Manohar Jagesha v. Manohar Shivram Jagesha, is the latest decision on this topic. The court reviewed the entire case law on the subject and observed that "cruelty has not been defined in the Hindu Marriage Act. However, it is well settled that the conduct complained should be grave and weighty as to come to the conclusion that the husband cannot reasonably be expected to live with the wife. It must be more serious than the ordinary wear and tear of married

life. The cumulative conduct, taking into consideration the circumstances and background of the parties has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. While doing so, several factors such as social status, background, custom, traditions, caste and community upbringing, public prevailing in the locality etc, will have to be taken into account." The court considering the question of cruelty based upon irresponsible, wild and baseless allegations made in the written statement without any evidence in support of the same, held that making such allegations amounts to cruelty, whether the wife intended to be cruel or not is immaterial. After reviewing the entire case law, the court laid down the principles which would be applicable in cases of petitions for divorce on the basis of cruelty. In paragraph 31, the court observed as follows:

"I am of the opinion that though the husband has failed to prove points Nos. 1 and 2 framed above (1) Whether the husband has not made out a case that after solemnisation of marriage the wife has treated him with cruelty and (2) It is not proved that the wife has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the husband cannot reasonably be expected to live with her, he would be entitled to a decree for divorce on the third point, namely, cruelty as a result of the wife's having made wild, reckless and baseless allegations in the written statement.

32. However, in the view which I have taken, the husband would be entitled to a decree for divorce on the ground of cruelty under Section 13(1)(ia) of the Act on the basis of the allegations made by the wife in paras 3 and 15 of the written statement noted above.....

33.....

The making of wild, reckless and baseless allegations of impotency and lack of manliness - itself amount to cruelty in the matrimonial law."

12. On facts, the two decisions in *Nirmala Manohar Jagesha v. Manohar Shivram Jagesha* (6 supra) and *Savitri v. Mulchand* (5 supra) are nearest to the facts of our case, and the principles laid down in these two decisions aptly apply to the case on hand. The trial judge is perfectly justified in relying upon baseless, scandalous and false allegations made in the written statement which remain unsubstantiated, for granting relief on the ground of cruelty.

13. Point No. 1: If we judge the evidence in the case, we find that the wife treated the husband from the time of marriage in a most inhuman manner. She was constantly harassing him, humiliating him and attributing various unbearable things to him. She was always referring to him as "Neechuda, Dharidruda, Tragubrothu" (Telugu words) and a debauchee suffering from all venereal diseases." It has come out in the evidence of P.W.1 that in addition to ill-treating him and humiliating him, she used to comment about the size of his penis and used to compare it with the penis of other physically well-built people. P.W.1 also claims that she was ill-treating his relations and she was even commenting that the petitioner is not fit enough to have sexual intercourse with her. In fact, he claims that right in front of his father she told him that he is not fit to be her husband, and that she would choose to have more competent well-built man as a companion. He

also states that she used to attack him with stick frequently, and that she used to kick him and she used to slap him in public places like Railway Platforms, bus-stands, roads, pawn-shops etc. He claims that subsequent to the filing of the petition, he was able to see some letters which were written to his wife by her friends and those letters clearly indicate that her affections lay somewhere else and not with him. The marriage took place on 23-8-1981 and even on the day of marriage, there were certain unpleasant incidents and soon after they came to Vijayawada. There were any number of . instances wherein the wife humiliated and insulted him and was treating him most cruelly. Considering the fact that both the petitioner and the respondent were working as lecturers and as they are highly educated with post-graduate degrees, such a sort of behaviour on the part of the wife is most reprehensible. It is now an established fact that from April, 1982, they are not residing together. Considering the evidence the trial court found that the claim, pi, the wife that even after filing the O.P., the husband was visiting her and the husband was coming and staying with her during nights cannot be believed. Reading the, entire evidence, we are also of the same view. Obviously, that plea was raised only with a view to negative any possible claim of desertion. P.W.2, the father of the petitioner, clearly mentioned that the respondent-wife commented to him that his son is not having any personality and that he has a tiny and puny creature. When he chastised her and advised her not to talk like that, she became furious and asked him to get out of the house threatening to break the legs if he does not leave the house.

14. When we read the evidence of the respondent, we find that in addition to her making various reckless and wild allegations against the husband in the written statement, she repeats all these allegations in her evidence. For instance, she states as follows:

"P.W.1 visits prostitutes. He is having venereal diseases. I came to know this from P.W.1 only. I am not having any doctors' reports or prescriptions... I advised P.W.1 to go to a doctor to get himself treated.... It is not true to suggest that I commented and criticised about the size of his penis and insulted him. It is not true to suggest that I criticised his personality. It is not true to suggest that I harassed him."

15. Here is a case where the appellant, a post-graduate in English literature and a Bachelor of Library Sciences, behaved with her husband in a most inhuman way abusing him on every occasion and humiliating and harassing him in numerous ways. Considering the fact that the husband is a lecturer in Chemistry with a post-graduate degree, it is impossible to believe that this couple can live happily together as claimed by the appellant-wife. Obviously no man with self-respect can be expected to live with a wife like R.W.1. We fully agree with the conclusion of the trial court that the respondent-wife was guilty of treating the petitioner cruelly. Mostly it is a case of inflicting mental cruelty and occasional physical cruelty. The granting of a decree for divorce on the ground of cruelty is perfectly justified in this case.

16. Taking a comprehensive view of the facts and the circumstances of the case, and taking the totality of the circumstances that have been established by the evidence, we are of the firm view that there is absolutely no doubt about the fact that the wife is guilty of treating the husband with cruelty. We also feel that there is absolutely no possibility for the spouses living together. If this court allows the appeal and reverses the judgment of the trial court, it would be driving the parties to suffer

greater unhappiness. Reconciliation proceedings attempted by the trial court on 9-8-1983 failed. We take note of this particular fact also while deciding this appeal.

17. In the result, the appeal is dismissed. The judgment and decree of the trial court are confirmed. Each party shall bear its own costs in this appeal.

JUDGMENT (Separate Judgment delivered by Upendralal Waghray, J.,)

18. I agree with the conclusions of my learned brother that the appeal is to be dismissed. I, however, like to add a few words on the aspect whether any statements made in a written statement (counter) by a contesting spouse to a divorce petition which, if proved to be false, can constitute a ground of cruelty for grant of relief in that petition itself? The cases noticed by my learned brother show the difference in judicial opinion to the approach to this question. The provisions of the Hindu Marriage Act and the need for expeditious disposal of matrimonial matters have to be kept in view. Sections 21-A, 21-B and 21-C inserted in 1976 indicate this. According to Section 21 the proceedings under the Act are to be regulated by the Civil Procedure Code subject to the provisions of the Act and also the Rules made by the High Court. It is a fact which can be taken judicial notice of that a matrimonial proceeding from the date of its commencement to the date of disposal of the appeal by the High Court takes more than five to six years and in some cases ten years. The object of speedy disposal is not marital peace alone but is to minimise trauma on the children and in case of dissolution of marriage to give an opportunity to the spouses to start a new marital life at a suitably young age. Any such allegations in the written statement, if proved, may be used to deny relief to the petitioner-spouse in view of Explanation to Sub-section (1) of Section 13 and also Section 23 of the Act. If such allegations in the written statement if proved, can be used to deny relief to the petitioner, can it be said that, if unproved, they cannot be treated as a relevant material for grant of divorce? The question of opportunity to the respondent-spouse, who has made such allegations also has to be examined in this light. It cannot be doubted that such an allegation, if unproved, will furnish a cause of action to the petitioner. Is it necessary to drive him to a fresh petition, when the attempt should be to avoid multiplicity of proceedings. The need for amendment of the petition will have to be considered if such allegations if unproved amount to desertion or cruelty, which is not pleaded as a ground. If such allegations, if unproved furnish a new ground like cruelty or desertion etc., which is not pleaded probably in an appropriate case amendment may be necessary. It is useful to notice the relevant Rule 6 framed by the Andhra Pradesh High Court under the Act:

"6. Contents of petitions:- (1) Every petition shall state:-

(a)xxxxxx

(b)xxxxxx

(c) xxxxxx

(d) xxxxxx

(e) xxxxx

(f) xxxxx

(g) if the petition is for judicial separation, the matrimonial offences alleged or other grounds, upon which the relief is sought, together with full particulars thereof so far as such particulars are known to the petitioner, e.g.,:-

(i) in the case of alleged desertion, the date and the circumstances under which it began.

(ii) in the case of cruelty or sexual intercourse with any person other than his or her spouse, the specific acts of cruelty or sexual intercourse and the occasion when and the places where such acts were committed together with the name and address of the person or persons with whom the respondent had sexual intercourse;

(iii) xxxx

(iv) xxx

(h) if the petition is for divorce, the matrimonial offence alleged or other grounds upon which the relief is sought together with the full particulars thereof so far as such particulars are known to the petitioner. e.g.,

(i) in the case of adultery, the specific acts of adultery and the occasion when and place where such acts were committed together with the name and address, of the person with whom such adultery was committed;

(ii) xxxxx"

The Rule indicates the" difference between a ground and particulars and requires such particulars in the petition as are known to the petitioner. Evidently, the petitioner will not know the contents of the written statement when he files the petition.

19. The cases noticed by my learned brother cover a wide spectrum of judicial opinion. In the decision reported in *Gurbachan Kaur v. Swaran Singh* (1 supra) it was held on facts that the allegation in the writtend statement did not amount to cruelty. In the decision reported in *Sulochana v. Ram Kumar* (2 supra) the learned single Judge held - vide para 14 of the judgment - that in the petition for divorce ground for cruelty was not pleaded and even after the written statement was filed containing the allegations against the husband, the petition was not amended and, therefore, the relief could not be granted on the ground of cruelty. In the decision reported in *Paras Ram v. Kamlesh* (4 supra) Sandhawalia, C.J., took the view that a mere statement in the written statement or counter containing allegations against the husband could not be the basis for grant of relief and the matter was remitted back to the trial court for amendment and further trial. This, to my mind, is a very broad proposition applicable to civil proceedings and the difference in

procedure for matrimonial matters was not considered. In the case reported in *Savitri v. Mulchand* (5 supra) vide paras 31 and 39 - it is held that any false, defamatory, scandalous, malicious, baseless and unproved assertions made in the written statement (i.e., counter) can be relied upon by the other spouse for grant of relief in that very proceeding. The plea that divorce petition was lacking in particulars was also not permitted as being belated in the circumstances - vide paras 49, 50 and 53. In that case, the respondent had also let in evidence in support of the assertions in the written statement which was not believed"

20. In the latest decision reported in *Nirmala Manohar Jagesha v. Manohar Shivram Jagesha* (6 supra) it is held that the allegation of impotency made against the husband in the written statement which was not proved amounted to cruelty and was treated as a ground for grant of relief in that petition itself which was on the ground of cruelty.

21. In my view, any allegations in the written statement (or counter) by the respondent-spouse in a petition for divorce or judicial separation, which are not proved may be used by the petitioner-spouse as additional particulars for the grant of relief subject to any need for opportunity to the respondent, if the circumstances require and a request is made at an early stage.