PETITIONER: S.HANUMANTHA RAO

Vs.

RESPONDENT: S.RAMANI

DATE OF JUDGMENT: 31/03/1999

BENCH: V.N.Khare, R.P.Sethi

JUDGMENT:

J U D G E M E N T

V.N.KHARE, J.

The appellant is the husband who is in appeal. The respondent is his wife. The appellant and the respondent were married according to Hindu rites and customs on 26-8-88 at Hyderabad. The marriage was also consumated. During October 1988, while the couple were in a honeymoon, it is alleged that the respondent told the appellant that she was forced into marriage by her parents, while she was more interested in her career rather than a married life, as she had studied M.Sc. in electronics. It is also alleged by the appellant that on 15.10.88, on a petty quarrel, the respondent walked out of his house and it was after great persuasion she was brought back to his house. The very next day of the said incident, the respondent was taken by her parents to their house and despite request by the appellant and members of his family, she did not return for about two-and-a-half months to the house of the appellant. During that period, there was a reconciliation, as a result of which the respondent was sent to the house of the appellant on the condition that she should be sent to the house of her parents on every Thursday and taken back on Saturday to facilitate her to perform Santoshimata Puja on every Friday. According to the appellant, this arrangement also did not suit the respondent and all the time she complained of deprivation and expressed her desire to return to her parents house permanently. On 8-3-89, it is alleged that the respondent in privacy took out her Mangalsutra and threw it at the appellant, and on the very next day, she went to her parents place and thereafter she never returned to the appellants house, despite several requests.

Thereafter, there were several meetings for reconciliation which failed. It is also alleged that the respondent got a complaint lodged through her uncle who was then posted as Superintendent of Police, with the Womens Protection Cell, CID, Hyderabad against him and his father and other members of his family as a result of which they had to seek anticipatory bail from the court. Subsequently, again, efforts were made for reconciliation but they did not fructify and under such circumstances, the appellant filed a petition before the Judge, City Civil Court, Hyderabad for dissolution of marriage by granting decree of divorce on the grounds of mental cruelty and desertion. The grounds of

cruelty were attributed to three acts of the respondent. Firstly, while in privacy, the respondent took out her Mangalsutra and threw it at the appellant; secondly, the respondent kept, maintained and preserved the copies of the letters sent by her to the appellant which shattered the mutual confidence between the couple; and thirdly, that the respondent lodged a complaint through her uncle against the appellant and the other members of his family u/s 498A IPC with the Womens Protection Cell, Hyderabad, for which they had to obtain anticipatory bail from the court. According to the appellant, all these three acts of the respondent constituted mental cruelty upon him and thus was entitled to a decree of divorce. The wife filed counter affidavit to the petition filed by her husband wherein she admitted that while in privacy she took out Mangalsutra and that she maintained and preserved the copies of letters sent by her to her husband. However, she denied having lodged any complaint with the Womens Protection Cell, Hyderabad or threw Mangalsutra at the face of her husband. The appellant examined himself as well as his witnesses in support of his allegation and filed the letters sent by the respondent to him which were exhibited as Exts. A1 to A10. The Fourth Additional District Judge, City Civil Court, found that the acts of the respondent in taking out Mangalsutra and throwing it at the husband, keeping and maintaining the copies of letters sent to her husband and lodging of complaint with the Women Protection Cell constituted mental cruelty upon the husband and as such the appellant was entitled to decree of divorce. However, the trial court found that the wife did not desert the appellant.

Aggrieved, the respondent filed an appeal before the Andhra Pradesh High Court. The High Court, on appreciation of evidence found, that the incidents alleged by the appellant were blown out of proportion and in fact those incidents did not constitute mental cruelty. Consequently, the decree of the trial court was reversed and the appeal was allowed. It is against this judgment the appellant is in appeal before us.

Learned counsel appearing for the appellant urged that the view taken by the High Court that since the parties after the incident of 8th March, 1989, cohabited and it therefore amounts to condonation of guilt of the wife is based on no evidence, and as such the said finding suffers from legal infirmity. It is true that the High Court recorded the following finding in its judgment - the very admission in the petition of the respondent that he did not make an issue of the incident and cohabited with the appellant, thereafter constituted condonation.

On a perusal of the petition filed by the appellant, what we find is that in the petition for divorce, the appellant has alleged that on 8th March, 1989, his wife took out her Mangalsutra and threw it at him and thereafter finally deserted him. We further find that the appellant and his witness in their testimony nowhere admitted that after the date of the incident i.e. on 8th March 1989 the wife and the husband cohabited. The respondent also in her evidence never stated that she cohabited with her husband after the date of incident. It is, however, correct that the appellant in connection with the incident of 8th March, 1989 stated that he did not make an issue out of the said incident as it would have disturbed the peaceful life of his family. But, he would never forgive his wife for the said act. We, therefore, do not find any evidence of the fact

that the parties cohabited after 8th March, 1989, as the wife stated to have left the house of the appellant after that date. In the absence of such evidence, the finding of the High Court that since the parties cohabited after 8th March, 1989 and as such same would constitute condonation of guilt, is unsustainable.

It was then urged that the view taken by the High Court that the incident of throwing of Mangalsutra by the wife as alleged by the appellant has not been substantiated and further the removal of Mangalsutra by his wife would not amount to mental cruelty within the meaning of Section 13(1)(ia) of Hindu Marriage Act, is erroneous. The appellant in his petition as well as in his evidence, alleged that his wife after taking out her Mangalsutra threw at him. The wife in her counter affidavit and statement admitted that she removed the Mangalsutra but denied that she had ever thrown the Mangalsutra at her husband. As stated above this incident took place in privacy. There was no other witness to the incident. The respondent very well could have denied the alleged incident. But she admitted to have removed the Mangalsutra only to please her husband. Moreover, when the wife was being cross-examined before the trial court no question was put to her about throwing of Mangalsutra at the appellant. For all these reasons we find that testimony of the respondent was rightly believed by the High Court while disbelieving the incident of throwing of Mangalsutra by the respondent, as alleged by the appellant.

Coming to the second limb of the argument whether the removal of Mangalsutra by the respondent constituted mental cruelty upon the husband, learned counsel for the appellant submitted that Mangalsutra around the neck of a wife is a sacred thing which symbolises the continuance of married life and Mangalsutra is removed only after the death of husband. Thus, the removal of Mangalsutra by the respondent-wife was an act which reflected mental cruelty of highest order as it caused agony and hurt the sentiments of the appellant.

Before we deal with the submission it is necessary to find out what is mental cruelty as envisaged under section 13(1)(ia) of the Act. Mental cruelty broadly means, when either party causes mental pain, agony or suffering of such a magnitude that it severs the bond between the wife and husband and as a result of which it becomes impossible for the party who has suffered to live with the other party. In other words, the party who has committed wrong is not expected to live with the other party. It is in this background we have to test the argument raised by the learned counsel for the appellant. The respondent after having admitted the removal of Mangalsutra stated, that while in privacy the husband often used to ask her to remove the chain and bangles. She has also stated that in her parents house when her aunt and mother used to go to bathroom they used to take out Mangalsutra from their neck and therefore she thought that she was not doing anything wrong in removing Mangalsutra when she was asked to do so by her husband. She also stated that whenever she removed Mangalsutra, she never thought of bringing an end to the married life and was still wearing her Mangalsutra; and it is when her husband made hue and cry of such removal of Mangalsutra, she profusely apologized . From all these evidence the High Court concluded that the incident was blown out of proportion and the appellant attempted to take advantage of the incident by picturising the same as an act of cruelty on the part of the wife. The question,

therefore, arises whether the removal of the Mangalsutra by the wife at the instance of her husband would amount to mental cruelty within the meaning of Section 13(1)(ia) of the Act. It is no doubt true that Mangalsutra around the neck of a wife is a sacred thing for a Hindu wife as it symbolises continuance of married life. A Hindu wife removes her Mangalsutra only after the death of her husband. But here we are not concerned with a case where a wife after tearing her Mangalsutra threw at her husband and walked out of her husbands house. Here is a case where a wife while in privacy, occasionally has been removing her Mangalsutra and bangles on asking of her husband with a view to please him. If the removal of Mangalsutra was something wrong amounting to mental cruelty, as submitted by learned counsel for the appellant, it was the husband who instigated his wife to commit that wrong and thus was an abettor. Under such circumstances the appellant cannot be allowed to take advantage of a wrong done by his wife of which he himself was responsible. In such a case the appellant cannot be allowed to complain that his wife is guilty of committing an act of mental cruelty upon him, and further by such an act, has suffered mental pain and agony as a result of which married life has broken down, and he is not expected to live with his wife. It also appears to us that, whenever the appellant asked her wife for removal of her Mangalsutra, the respondent never comprehended that her husband at any point of time would react to such occurrences in the way he did. Under such circumstances, the appellant was not expected to have made an issue out of it. We are, therefore, of the view that removal of Mangalsutra by the respondent would not constitute mental cruelty within the meaning of Section 13(1)(ia) of the Act.

The next ground of act of cruelty attributed to the wife relates to her preserving and maintaining copies of her letters sent to her husband. Learned counsel urged that the act of the wifes preserving copies of such letters has shaken the confidence of the husband which amounts to mental cruelty upon her husband, as according to him, copies of such letters were preserved knowingly to use them as evidence in future and such an action definitely amounts to mental cruelty.

The view taken by the High Court was that mere retention of copies of the letters would not amount to mental cruelty. We also find that if the wife had any intention to use copies of those letters she would have filed the same before the trial court. Excepting filing a counter affidavit the respondent-wife did not file any copy of the letters sent to her husband, whereas the husband has filed all the letters sent to him by his wife in the court which were exhibited. The respondent wife in her testimony stated that she wrote several letters to her husband, but her husband did not reply any of them and as such she started preserving the copies of the letters sent by her to her husband. This act of the respondent, according to us, is a most natural behaviour of human being placed in such circumstances. Thus, we find mere preserving the copies of the letters by the wife does not constitute an act which amounts to mental cruelty, and a result of which it becomes impossible for the husband to live with his wife. We, therefore, reject the submission of learned counsel for the appellant.

The last act of the respondent, which according to the learned counsel for the appellant, amounts to mental cruelty is that she lodged a complaint with the Women Protection

Cell, through her uncle and as a result of which the appellant and the members of his family had to seek anticipatory bail. The respondent in her evidence stated that she had never lodged any complaint against the appellant or any members of his family with the Women Protection Cell. However, she stated that her parents sought help from Women Protection Cell for reconciliation through one of her relative who, at one time, happened to be the Superintendent of Police. It is on the record that one of the functions of the Women Protection Cell is to bring about reconciliation between the estranged spouses. There is no evidence on record to show that either the appellant or any member of his family were harassed by the Cell. The Cell only made efforts to bring about reconciliation between the parties but failed. Out of panic if the appellant and members of his family sought anticipatory bail, the respondent cannot be blamed for that. Thus, we are of the opinion, that representation made by the parents of the respondent to the Cell for reconciliation of the estranged spouses does not amount to mental cruelty caused to the appellant.

For all these reasons, we do not find any merit in this appeal. The appeal is accordingly dismissed.
There shall be no order as to costs.