



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF OCTOBER, 2024

PRESENT

THE HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR

AND

THE HON'BLE MR JUSTICE UMESH M ADIGA

MISCELLANEOUS FIRST APPEAL NO. 5891 OF 2019 (IDA)

Between:

Mr Vimalanathan Sigamani T,
S/o Mr. S. Thiagaraj, Aged about 49 years
R/at. Prakruthi Ganga Apartment,
R.T. Nagar, Bangalore 560032

Also at: Microsoft India (R&D) Pvt. Ltd.,
Global Technical Support Centre,
Prestige Ferns Galaxy, Sixth floor, Survey No.7/1,
7/2 & 8/1A, Ambalipura Village, Varthur Hobli,
Outer Ring Road, Bengaluru 560103.

- Appellant

(By Sri. Abhinav R, Advocate)

And:

Mrs. Melo Kamalam W/o Mr. Vimalanathan
D/o Joseph Kamalam, Aged about 47 years
R/a.312, B No.8, 1st Floor, Golden Nagar,
K.P. Nagar, Parvathipuram,
Nagercoil Post Office 629003
Kanya Kumari Dist., Tamil Nadu.

Also at: No.19/1, 1st Floor, 2nd Main,
IV Cross, Ganganagar Extension
R.T. Nagar Post, Bengaluru 560032

- Respondent

(Smt. Melo Kamalam, respondent, appearing as
party-in-person)

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VEERENDRA
KUMAR K M
Location: HIGH
COURT OF
KARNATAKA



This MFA is filed under section 55(1) of Indian Divorce Act, against the judgment and decree dated 11.06.2019 passed in MC No.3492/2011 on the file of the IV Additional Principal Judge, Family Court, Bengaluru, dismissing the petition filed under section 10(x) of Divorce Act & etc.

Date on which the appeal was reserved for judgment	12.09.2024
Date on which the judgment was pronounced	22.10.2024

This appeal, pertaining to Bengaluru Bench, having been heard and reserved, coming on for pronouncement this day at Dharwad Bench, judgment was delivered therein as under:

HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR
CORAM: and
HON'BLE MR JUSTICE UMESH M ADIGA



CAV JUDGMENT

(PER: HON'BLE MR JUSTICE SREENIVAS HARISH KUMAR)

This appeal is by the petitioner in M.C.3492/2011 on the file of IV Additional Principal Judge, Family Court, Bengaluru, who initiated action for dissolution of his marriage with respondent/wife, by invoking section 10(x) of Indian Divorce Act. Since the Family Court by its judgment dated 11.6.2019 dismissed the petition, he has filed this appeal.

2. The appellant and the respondent are Christians, their marriage was solemnized on 04.01.2002 at Church of South India (CSI), Karungal, Tamil Nadu. In the wedlock, they begot two sons. The appellant was doing business in Computers at Chennai at the time when he married the respondent, and in the year 2004, he and the respondent shifted their residence to Bengaluru as he secured an employment in Bengaluru.



3. The appellant, in his petition, has narrated several instances to seek divorce on the ground of cruelty. The main allegations are that in the course of time, the respondent started harassing him, and sometime in the year of 2005, she poured hot water on him consequent to which he sustained burn injuries and could not walk properly. She refused to prepare food for him and the child, and she was not taking care of the child also. She along with her kith and kins tried to take away all his earnings. She was going out of the house without informing him the place where she was going, and she refused to divulge information as to the place where she had gone. This made him opt for nightshift work so that he could take care of the children during day time. As he was working in a software concern, he had to leave headquarter whenever his employer asked him to go out on office work, and on one such occasion he had to go out of Bengaluru on 05.03.2011. When he returned home on 07.03.2011, he was shocked to see many things including his computers, utensils, gas stove, etc., missing. On



enquiry with the security of the apartment where he was living, he came to know that on 06.03.2011 itself she was found boarding a vehicle. As he could not trace her whereabouts despite enquiry with his relatives and friends, he had to make missing complaint at R.T.Nagar Police Station. Because leaving Bengaluru abruptly, his son who was attending annual examination, could not appear for examination in all subjects and thereby he lost one year. The respondent filed false complaints against him alleging that he harassed her for dowry. He was harassed by the police and this made him obtain anticipatory bail. She also filed a complaint against him at Nagarcoil on 10.03.2011, and another petition before the Judicial Magistrate at Nagarcoil under Protection of Women from Domestic Violence Act.

3.1. Her behaviour with children was not good. On one occasion she tried to hit her first son with a knife as the son disclosed that his mother was lying. Without bringing to his knowledge, she sent the children to the



house of her relative at Nagarcoil, and with much efforts he could locate the children. When he went there to bring back children, his wife's relative demanded for substantial money to give the children to his custody and this made him approach the police. Like this, the petitioner alleges cruelty on him by his wife.

4. The respondent out rightly denied all the allegations made against her by the petitioner and counter blasted by stating that after the marriage, the petitioner and his sister mortgaged all her jewelleries with a bank where the petitioner's sister was working; that she was demanded to bring dowry; that at the time of marriage, the petitioner's business was sinking and therefore she was compelled to borrow money from her relatives and friends. She stated that she too worked with the petitioner even during her pregnancy, and because of her contribution, physically and financially, the petitioner was able to regain his business. When she had gone to her parents house, he closed down his business without



informing her although there was investment of Rs.12,00,000/- from her side. The petitioner was only interested in money; she was always a dutiful wife; the petitioner had no intention to lead peaceful married life. Another allegation against the appellant was that he mortgaged most of jewelleries with the help of her sister, Mahil Kamaraj. The money of Rs.2,82,000/- obtained after mortgage was deposited by her sister in the bank account and the appellant withdrew all the money using the ATM card. He compelled her to surrender her UTI savings and thus he used Rs.1,50,000/-. He stopped buying provisions required for household; and he did not care for her medical requirements. He only opted to work in night shifts and he was beating the children if they spoke to him during daytime. On 05.03.2011, the appellant dashed her head against a wall. On 06.03.2011 she found a sharp weapon in one of the shelves of the hall and frightened by this she had to leave the husband and went to her parents' house with children. She has given details of cases which she was compelled to initiate



because of harassment on her. At last she prayed for dismissing the petition for divorce.

5. The appellant and the respondent themselves adduced evidence before the Family Court as PW1 and RW1 respectively. Upon considering the oral and documentary evidence, the Family Court arrived at a conclusion that the appellant failed to prove cruelty meted out to him by the respondent and dismissed the petition. One conclusion is that except a stray incident said to have occurred during the year 2005, there is no evidence indicative of respondent's aggressive behaviour. Placing reliance on a judgment of this court in ***B.Gangadhara vs M.Nagarathnamma [MFA No. 2276/2013]***, it has been held that such kind of evidence as would appear to be grave and weighty so that a spouse would find it difficult to live with another partner, is absent. And all the allegations appear like general statements.



6. The appellant has filed an application as per I.A.1/2019, under Order 41 Rule 27 of CPC seeking to produce certified copy of order in C.C.36006/2011.

7. We have heard Sri Abhinav Ramanand, learned counsel for the appellant. The respondent appeared in person and put forth her contentions. They also filed their written arguments.

8. The points arising for discussion are :

(i) Has the Family Court erred in drawing a conclusion that the appellant has failed to establish the allegations amounting to cruelty meted out to him by the respondent?

(ii) Whether application under Order 41 Rule 27 of CPC can be allowed?

9. Before reappraisal of the case, it may be stated that in matrimonial cases, where suppression and exaggeration of events is common place, evidence cannot



be appreciated in the way it is appreciated in other civil cases; Euclid formula cannot be applied; there is nothing wrong in traversing beyond pleadings. Comprehensive approach is needed, documents for every allegation cannot be expected, in fact it is impossible to produce document for every allegation. The Family Court has observed that in regard to allegation of pouring hot water on the appellant, he should have produced some materials to substantiate that allegation. It is observed that medical documents could have been produced. It is to be stated here that the respondent does not dispute the fact of appellant sustaining burns, what she has said is that hot water fell on him when he was bringing it in a bucket. This is one instance how an incident would be blown out of proportion when relationship between spouses strain.

10. Sri Abhinav Ramanand argued by referring to each document produced on behalf of the appellant and mainly contended that, it is not in dispute that the respondent initiated numerous cases against the appellant,



and she withdrew every case after the appellant filed objection statement. This shows that all cases initiated by her were false, and she dared not to pursue the litigations once appellant contested. Therefore continual litigations, that too in criminal courts, was nothing but cruelty on the appellant. Referring to certified copy of the judgment in a criminal case produced along with application under Order 41 Rule 27 of CPC, he argued that it has been clearly observed there that the evidence of PW3 i.e., the respondent in this appeal is untrustworthy. The judgment in criminal case is a reflection of respondent's conduct. He also contended that the two sons of the parties are now living in United States of America and the appellant is also in United States of America. The children do not want to see their mother. These being the state of affairs, there is no meaning if they are asked to live together. The trial court has failed to appreciate the evidence properly. The same grounds are urged in the written arguments.



11. On the other hand, the respondent contended that the appellant is guilty of contempt in as much as he failed to pay maintenance. The appellant took away the children from her without her consent. She had to withdraw the cases filed by her on a false promise made by the appellant that he would take her back. Keeping the children away from her would amount to cruelty. Her ATM card was taken away by the appellant to withdraw money from her account. Ex.R3 does not indicate that she withdrew her allegations. She was subjected to ill treatment and torture by the appellant. In the written arguments submitted by the respondent, she states that she was subjected to cruelty by the appellant in different ways, and alleges that the appellant has committed contempt of court.

12. If the oral testimonies of PW1 and RW1 in cross-examination are perused, both side advocates could do nothing more than giving suggestions, which are almost denied. It is quite obvious that in cases where there are



mutual allegations, only suggestions could be given. However, RW1 admits many cases being initiated by her against PW1-i.e., the appellant.

13. Out of 68 documents produced by the appellant, all need not be considered. There is no dispute that respondent instituted many cases. This is evidenced by Ex.P5, Ex.P12, Ex.P25, Ex.P26, Ex.P28, Ex.P29, 29A, Ex.P32, Ex.P36. It is undisputed fact that the respondent withdrew the cases filed by her after the appellant contested the same. As to the cases withdrawn by her, she has an explanation that she had to do so believing the assurance given by the appellant. This explanation is not believable on the face of it because it was not only one case that was withdrawn. If the appellant did not take her back after she withdrew one case, that should have alerted her while withdrawing the next case. Therefore the inference that can be drawn is that withdrawal of cases was her voluntary decision. Ex.P16, Ex.P17, Ex.P27 and Ex.P34 evidence this aspect. And it also indicates her



intention to constantly keep the appellant on tenterhooks. It is needless to state that this kind of a situation creates mental turmoil.

14. It is very pertinent to mention here that as evidenced by Ex.P16 and Ex.P17, when the respondent withdrew GWOP 181/2012, the appellant insisted on costs to be paid to him making it very clear that respondent was in the habit of filing case after case and she would withdraw the cases no sooner the appellant chose to contest. Accepting this submission, cost of Rs.1,500/- was imposed on the respondent. Imposition of costs falsifies respondent's stand that she believed the appellant's words that he would take her back.

15. Ex.P18 depicts the respondent's another kind of conduct towards her husband, she alleges that husband is sexually handicapped. The words used are "sexually handicapped cannot lead a happy married life! Commonsense and legally too". If Ex.P18 is considered,



appellant is justified in alleging that he was put to mental agony.

16. Respondent mainly alleges that the appellant took away the children with him in her absence. She refers to Ex.R12. It is true that the appellant addressed a letter to Mr.P.Kamaraj stating that he had taken the custody of two children when the respondent had come over to Bengaluru to attend an examination. The appellant states that he had to write so because he was compelled to write like that. Whatever it is, Ex.P9, the order dated 24.05.2012 passed by Madurai Bench of Madras High Court in ***MP(MD) 1/2012 IN CRL OP(MD) 6604/2012***] shows that two children expressed their desire to live with their father, and the respondent did not appear before Madras High Court at that time. If really the respondent has love and affection towards her children, as she has submitted before this court, she should have appeared before Madurai Bench and made her submissions. Respondent is not illiterate, she has many



degrees beside her name. If she states that she simply believed her husband's assurance, it is difficult to accept her explanation. Therefore Ex.R12 is not helpful to the respondent. Ex.R36 is a copy of the letter produced by respondent. She addressed that letter to Senior Director of Microsoft where the appellant was working making certain allegations against him. According to appellant this letter was defamatory and it was written by the respondent with a view to harassing him.

17. Many documents that the respondent got marked throw light on some financial transactions, and pledging of jewelleries, but no inference can be drawn from them that the appellant used to harass her.

18. I.A.1/2019 filed by the appellant under Order 41 Rule 27 of CPC may be allowed for the reason that it is copy of judgment in a criminal case initiated at the instance of the respondent. The appellant could have produced it during trial. But in the affidavit filed along with application, it is stated that by the time judgment



was pronounced by the Criminal Court, recording of the evidence of appellant i.e., PW1 was over and therefore he could not produce it. Order 41 Rule 27 of CPC envisages that additional evidence can be received for any other substantial cause. This judgment copy throws light on the conduct of respondent. Therefore it can be received in evidence and it can be looked into directly without there being need for recording oral evidence on it, for respondent cannot deny judgment in C.C.36006/2011.

19. Perusal of judgment in C.C.36006/2011 shows that the respondent alleged harassment on her by the appellant and therefore he was tried for the offence under section 498A of IPC. In that case respondent adduced evidence as PW3 and deposed in examination chief that there was demand for dowry. In the cross examination she was confronted with a letter written by her to the investigating officer that her husband had not demanded for dowry. Adverting to this letter and other evidence, the criminal court found the respondent an untrustworthy



witness and thereby acquitted the appellant. This judgment reflects more on the conduct and attitude of the respondent than any other document.

20. Out of many decisions cited by the appellant's counsel, only one judgment may be referred here as it suffices the situation. In ***A.Jayachandra vs Aneel Kaur [(2005) 2 SCC 22 : 2004 SCC Online SC 1523]***, the meaning of the word 'cruelty' is explained. It is held.

"10. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an



apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

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14. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified



to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hyper-sensitive approach would be counter-productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to deal with particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court. (See Dastane v. Dastane, AIR 1975 SC 1534)."

21. Therefore if this case is put to analysis there is probability in the case put forth by the appellant that he was a subject of mental cruelty perpetrated on him by respondent. They separated long back. Their marriage has broken down to a point of no return. Children also do not want their mother. These aspects should have weighed with the Family Court. Its findings are therefore not sustainable. Here is a case for dissolution of marriage. Points (i) and (ii) are accordingly answered.



22. So far as alimony is concerned it was argued by the appellant's counsel that the respondent is a practising advocate besides being a owner of wind mill and she has independent source of income. Though this argument was not controverted by the respondent, this issue is kept open. If alimony is to be provided for, enquiry requires to be held. Therefore liberty is given to respondent to initiate separate proceedings if she is interested in claiming alimony.

23. Now the following order from the above discussion :

(i) Appeal is allowed.

(ii) Judgment of Family Court in M.C.3492/2011 is set aside.

(iii) Petition filed under section 10(x) of Indian Divorce Act is allowed. The marriage of the appellant with respondent solemnized on



04.01.2002 is dissolved and decree of divorce is granted.

(iv) There is no order as to costs.

(v) All pending applications are disposed of.

Sd/-
(SREENIVAS HARISH KUMAR)
JUDGE

Sd/-
(UMESH M ADIGA)
JUDGE

CKL/bvv
List No.: 19 Sl No.: 6