



C.M.A.(MD) Nos.289 & 290 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD)Nos.289 & 290 of 2024
and C.M.P.(MD)Nos.3771 & 3773 of 2024

In C.M.A(MD)No.289 of 2024:

T.Anne Esther Jasmine.

... Appellant

VS

J.Godwin Saintly.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of C.P.C read with Section 55 of the Indian Divorce Act, against the judgment and decree dated 22.12.2023 in I.D.O.P.No.78 of 2021 on the file of the I Additional District Court, Madurai.

For appellant : Mr.K.Samidurai

For Respondent : Mr.D.Srinivasa Raghavan
for Mr.S.M.Mohan Gandhi

In C.M.A(MD)No.290 of 2024:

T.Anne Esther Jasmine.

... Appellant

VS

J.Godwin Saintly.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Order XLIII Rule 1 of C.P.C read with Section 55 of the Indian Divorce Act, against the



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judgment and decree dated 22.12.2023 in I.D.O.P.No.7 of 2021 on the file of the I Additional District Court, Madurai.

For appellant : Mr.K.Samidurai

For Respondent : Mr.D.Srinivasa Raghavan
for Mr.S.M.Mohan Gandhi

COMMON JUDGMENT

The captioned appeals C.M.A.(MD)Nos.289 & 290 of 2024 have been filed by the wife aggrieved by the grant of decree of divorce on the petition filed by the respondent herein and dismissal of her petition for restitution of the conjugal rights, respectively.

2. The facts leading to the filing of the appeal are as follows:

a. The marriage between the appellant and the respondent was solemnised on 27.12.2019 in the presence of elders of both their families.

b. Disputes arose between the parties within few months from the date of marriage. According to the respondent, he was aggrieved since the appellant did not perform her conjugal rights; that she was always engaged in her mobile phone; and that on one occasion, he found out from her phone that she had sent certain messages to her friends, in which she



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had made some defamatory statements against the respondent; and that the respondent also found a diary maintained by the appellant, in which she had stated about love affair prior to marriage with a third party.

c. The appellant filed a counter denying the averments stating that the casual messages sent to her friends were misinterpreted by the respondent; that the respondent, who had not treated the appellant with care and affection, used to scold the appellant in the presence of others; that the mother-in-law of the appellant had always accused her for not bringing sufficient jewels and dowry; and that she was always a dutiful wife and hence, prayed for dismissal of the divorce petition.

3. Before the Tribunal, the respondent examined P.W.1 and P.W.2 and marked Exs.P1 to P16. The appellant examined R.W.1 and R.W.2 and did not mark any documents.

4. The Court below, after taking into consideration the oral and documentary evidence, held that the respondent had established cruelty and therefore, passed a decree of divorce and dismissed the petition for restitution of conjugal rights.



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5. The learned counsel for the appellant submitted that the petty quarrels between the husband and wife have been exaggerated; that innocuous messages sent to her friends have been treated as causing cruelty to the respondent, which is erroneous; that the Trial Court ought not to have believed the entries made in the diary to infer that the respondent suffered cruelty by the appellant and hence, prayed for setting aside the decree of divorce.

6. The learned counsel for the respondent, per contra, submitted that the messages sent by the appellant have been proved by the respondent, which are highly defamatory in nature and those messages would reveal that the respondent suffered cruelty; and that the Trial Court had also rightly considered the entries in the diary, which would suggest that the finding with regard to the cruelty is justified and no interference is called for.

7. The only point for consideration in the instant appeal is '*whether the respondent is entitled to the decree of divorce on the ground of cruelty?*'



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8. The Trial Court had extracted the messages sent by the respondent to her friends. The relevant messages read as follows:

- “நான் ஏன் சாவனும் அந்த ஆளை சாவடிப்போம்னு action ல் இறங்கிட்டேன்,
- இந்த ஆளை இப்படித்தான் என்னால் punish பண்ண முடிகிறது,
- சாப்பாட்டில் காரத்தை அள்ளிப் போட்டு விடுவேன் அவன் பேசாமல் சாப்பிட்டுவிட்டு போய்விடுவான்,
- இந்த ஆளு பைத்தியமடி அதுக்குக்கூட வேற எவனையாவது இழுத்துக் கொண்டு போயிருப்பேன் அப்போது இந்த நிலைமை வந்திருக்காது,
- இங்கல்ல ஒண்ணும் நடக்கல அவனை தோடவிட்டதே இல்லை, அவன் நோந்து கிடக்கிறான்,
- எனக்கு Divorce ஆகிடும்,
- இந்த ஆள் வந்திருச்சி இனி mobile use பண்ண முடியாது, அவனை இப்படித்தாண்டி என்னால punish பண்ண முடியுது. சாப்பாட்டிலேயும் வேலையை காட்டுவேன். மிகாய் பொடியை அதிகமாய் போட்டு விட்டுறுவேன், அமைதியாய் தின்னுட்டு போய் விடுவான்.
- புலி பேசாமல் கனியம் வச்சிருடி. யாருக்கும் தெரியாது.
- இந்த ஆளு என் birthday க்கு எது வேண்டும் என்று கேட்பான். நான் corona வேண்டும்னு கேட்பேன். இல்லேனா blood donate பண்ணனும் ஆஸ்பத்திரி போயிட்டு corona எடுத்துட்டு வந்துருவேன். ஜாலிதான்.
- இந்த ஆளுக்கு நாளையிலிருந்து 10 நாளைக்கு work from home என்ன பாவம் பண்ணினனோ தெரியவில்லை.



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- இந்த ஆளு என்னை சாகவும் விடமாட்டான்டி. இந்த சனி வீட்டைவிட்டு வேளியேயும் போக மாட்டேன்குது.
- அந்த ஆளு Saturday hit ஐ குடிச்சிட்டான், அது சும்மா Scene டி எங்கிட்டயே film ஒட்டினா சும்மா spray பண்ணிக்கிட்டு காலையிலே சேத்துருவேன்று Scene போட்டிருந்தான். குடிக்கக் கூட இல்லை, அப்புறம் reel ஐ நிறுத்திட்டான்,
- ஆனா ஒரு நாள் சோன்னே அம்மா, அப்பாட்டே 3 hours ஆ பேசினேன், என் life வோட important decision எடுக்க, அப்போ என் பேச்சை கேட்கல, அவங்க பேசினது தான் correct என சோன்னாங்க, அப்பவும் நான் சொன்னேன் சந்தோசமா இருக்கமாட்டேன் இது நடந்தானு. but அவங்க கேட்கல life மாறிருச்சி அதனாலே.
- அந்த ஆளு psychoடி, கிறுக்கன், நான் நல்லா வந்து கேவலமாக மாட்டிருக்கேன்.”

9. The appellant has not disputed the above messages sent to her friends. The admission made in the above messages are sufficient to hold that the respondent suffered cruelty. The appellant has gone to the extent of accusing the respondent as a psycho and also admitted that she had denied conjugal rights, to the respondent.

10. That apart, the appellant had also made entries in her diary, in



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which she had admitted her relationship with a third party. The appellant had not denied the entries in the diary but sought to explain the same by stating that he was a colleague and was like a brother to her. The question is not whether the appellant had any illicit intimacy with another person. But the real question is whether those messages would cause cruelty to the husband. The relevant messages read as follows:

“நானும் என்னுடைய டைரியில் நாங்கள் பீச்சிற்கு சென்றோம்,
அப்போது கிரி என்னுடைய துப்பட்டாவை துடைத்துவிட்டு,
எல்லோரும் மாற்றி மாற்றி போட்டு கோண்டே சுற்றியதாகவும்,
எல்லோரும் வைத்திருந்ததாகவும், அதை உபயோகப்
படுத்தியதாகவும் டைரியில் எழுதியுள்ளேன் என்றால் சரிதான்.”

11. The above deposition in the cross-examination would show that the appellant had admitted that she made the entries. The entries would certainly cause mental cruelty. Therefore, this Court is of the view that the judgment of the Trial Court, in which the certain other messages were also extracted to conclude that the respondent suffered cruelty, cannot be faulted. Therefore, the decree of divorce granted to the appellant deserves to be confirmed.

12. However, at the time of argument, it was submitted by the



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learned counsel for the appellant that the respondent has not returned the jewels weighing 70 sovereigns, which were handed over to the respondent at the time of marriage. The learned counsel for the respondent, however, denied the said fact and submitted that only 35 sovereigns of jewels were handed over; and that they had gifted nearly 12 sovereigns of jewels to the appellant at the time of marriage.

13. This Court is of the view that the said dispute can be resolved by the Civil Court, if the parties are advised to approach the Civil Court. However, to show his *bonafides*, the respondent, today, handed over 35 sovereigns of jewels to the appellant, which is acknowledged by the appellant and the same is recorded.

14. The memo filed by the respondent reads as follows:

"1. The Respondent submits that he is handing over 23 Sovereign of Gold Jewels in the following descriptions namely:

- i. Kal Kaappu - 4*
- ii. Small Kal Kaappu - 3*
- iii. Chain with Cross -1*
- iv. Necklace Plain -1*

in total, all the above articles are weighing 184 Grams.



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2. *The Respondent states that he is handing over another 12 Sovereign of Gold, which was given to the Respondent at the time of marriage, are also handing over to the Appellant/Wife with following descriptions*

i. Chain with Cross - 1

ii. Ring - 1

iii. Bracelet - 1

all the above article are weighing 96 Grams in total gold jewels of 35 Sovereigns are handed over to the Appellant today.

iv. The Respondent submits that he will ready to hand over all the house hold articles to the Appellant at any time the convenient of them. Either the Appellant or on her behalf any one can come with prior intimation to collect the house hold articles after verifying the same.

v. The Respondent submits that the 12 Sovereign of Gold Jewels, which were given to the Appellant at the time of marriage with the following descriptions:-

i. Thali Chain -1 - 62.58 Gram

ii. Necklace – 1 - 18.42. Gram,

iii. Ring -1 - 6.09 Gram

iv. Ring -1 - 10.13 Gram

are with Appellant

The Respondent prays that this Hon'ble Court may be pleased to accept the above memo and thus render justice.



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Dated at Madurai, on this 23rd day of October, 2024”

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15. The appellant has not disputed para 1 to 4 of the memo. As regards para 5, the learned counsel for the appellant would submit that the necklace and the ring mentioned as item Nos.2 and 3 in para 5 were not handed over to the appellant. However, this Court is of the view that all the issues can be decided by the Civil Court if the parties choose to approach the Civil Court.

16. In view of the decision taken in the appeal challenging the grant of divorce, the question of considering the petition for restitution of conjugal rights does not arise and consequently, the CMA challenging the order passed in the petition for restitution of conjugal rights also cannot be entertained.

17. In the result, these Civil Miscellaneous Appeals are dismissed.
No costs. Consequently, connected miscellaneous petitions are closed.

23.10.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No



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1. The I Additional District Judge, Madurai.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

SUNDER MOHAN,J

apd

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