

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-07-2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

C.M.A.Nos.342 and 343 of 2016
and
C.M.P.Nos. 2574 and 2575 of 2016

Ashok Acharya .. Appellant in both Appeal

Vs.

Heena Acharya ...Respondent in both Appeal

Civil Miscellaneous Appeals against the judgment and decree dated 27-08-2015 in H.M.O.P.Nos.1051 of 2010 and 131 of 2011 on the file of the Principal Family Court, Coimbatore.

For appellant : Mr. AR.L. Sundaresan, Senior Counsel
For M/s. T.Nirmaleshwar in both Appeal

For respondent : M/s.Udaya P.S.Menon in both Appeal

JUDGMENT

(A. SELVAM, J.)

These civil miscellaneous appeals are directed against the common order passed in H.M.O.P.Nos.131 of 2011 and 1051 of 2010 by the Principal Family Court, Coimbatore.

2. The appellant in C.M.A.No.343 of 2016, as petitioner has filed H.M.O.P.No.131 of 2011 on the file of the Trial Court under Section 13(1)(i-a) and (iii) of the Hindu Marriage Act, 1955 wherein the respondent in C.M.A.No.343 of 2016 has been shown as sole respondent. Likewise, the respondent in C.M.A.No.342 of 2016 as petitioner has filed H.M.O.P.No.1051 of 2010 under Section 9 of the Hindu Marriage Act, 1955 wherein the appellant in C.M.A.No.342 of 2016 has been arrayed as sole respondent.

3. The material averments made in the petition filed in H.M.O.P.No.131 of 2011 can be stated like thus:

The marriage between the petitioner and respondent has taken place on 05-07-1998 at R.S.Puram, Coimbatore and subsequently, registered on 30-10-1999 in the Registered Office of Domlur, Bangalore. Prior to marriage both the petitioner and respondent have served in a Company and both of them have loved each other, which culminated in their marriage. After marriage, the respondent has expressed her unhappiness over the financial status of the petitioner. The respondent has not shown requisite interest in marital life. The petitioner has made several attempts to have normal life. The petitioner is having good health. Since the respondent has failed to co-operate with the petitioner, he has become frustrated. The respondent has also joined in a Company at Bangalore and she developed illicit intimacy with her supervisor. The respondent has resigned her job in July 1999 and also refused to celebrate their first anniversary. The petitioner has not been able to fulfill the luxurious life expected by the respondent. In March 2000, the respondent has joined in Shift Four Softwares Services, Koramangala, Bangalore and started to have adulterous relationship with one Chacko Kuruvilla, who is one of the Managers of the said Company. In March 2000, the petitioner has visited the Office of the respondent and found the respondent with Sri Chacko Kuruvilla in a compromising position. The petitioner has questioned the illicit intimacy of the respondent and she stated that she is having such kind of affair and subsequently, various occurrences have taken place. The respondent has denied conjugal rights of the petitioner from June 2003 till date. In May 2004, the respondent has started to show her real colours. In the month of February 2008, several rounds of counselling have been done but no fruitful action has come out. The respondent is not capable of looking after the child. Since she is always showing an indifferent attitude towards the child, she has caused cruelty to the petitioner. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

4. In the counter filed on the side of the respondent, it is averred that the marriage between petitioner and respondent has been conducted on 05-07-1998 in R.S. Puram, Coimbatore and the same has been registered at Domlur, Bangalore. It is true to aver that prior to marriage both the petitioner and respondent have loved each other. It is false to aver that the respondent has always shown her unhappiness in respect of

financial status of the petitioner and it is also equally false to aver that she is always willing to lead luxurious life. It is an atrocious lie to say that the respondent has not co-operated with the petitioner for having sexual intercourse. The petitioner has gone to New Zealand and subsequently, the respondent has also gone there. The respondent has delivered a male baby by name Adit. The respondent is not having any hormonal problem. It is false to aver that the respondent is having indifferent attitude towards the child. In fact, both the respondent and her son Adit are bound by strong emotional ties as mother and son. The petitioner has deserted the respondent without sufficient cause. Under the said circumstances, she has filed H.M.O.P.No.1051 of 2010 and as a counterblast, the petition, H.M.O.P.No.131 of 2011 has been filed, purely on false and false grounds and there is no merit in the petition and the same deserves to be dismissed.

5. The material averments made in the petition filed in H.M.O.P.No.1051 of 2010 may be stated like thus:

The petitioner is the legally wedded wife of the respondent. Prior to their marriage they loved each other and subsequently, got married. After marriage, the petitioner has used to do all domestic works. The respondent on several occasions has been seen along with a spinster lady by name Bhuvaneswari Kasinath. The petitioner has questioned the same. But the respondent has not given proper answer. During Deepavali 1999, the petitioner has got burnt injuries. But the respondent has failed to take her to the Hospital. In the year 2003, the respondent has gone to New Zealand. At that time, the petitioner has resided in the house of her brother at Chicago. In June 2003, both the petitioner and the respondent have come down to Bangalore. On 14-01-2004, the petitioner has given birth to a male child. The respondent has refused to take the petitioner for any social gatherings. Sometimes, the said Bhuvaneswari used to take the child of the petitioner and respondent to such gatherings. The respondent has made cruelty to the petitioner and finally, on 04-03-2010, she has been driven out from marital aboard. The petitioner is always willing to live with the respondent. Under such circumstances, the present petition has been filed for getting the relief sought therein.

6. In the counter filed on the side of the respondent, it is averred that the facts mentioned in the petition with regard to marriage of the petitioner and respondent and their prior relationship are admitted. But, it has been specifically denied to the effect that the respondent is having illicit intimacy with one Bhuvaneswari Kasinath. Further, it is averred in the

counter that the cruelty alleged to have been caused by the respondent is denied as false. The petitioner has willfully withdrawn from the society of the respondent and further, she has not shown her willingness to have sexual intercourse with the respondent. Under the said circumstances, the present appeal deserves to be dismissed.

7. On the basis of the oral and documentary evidence available on record, the Trial Court has dismissed H.M.O.P.No.131 of 2011 and allowed H.M.O.P.No.1051 of 2011 by way of passing a common order. Against the common order passed by the Trial Court, the present civil miscellaneous appeals have been preferred.

8. The main contentions urged on the side of the petitioner in H.M.O.P.No.131 of 2011 are that he married the respondent on 05-07-1998 at R.S. Puram, Coimbatore and subsequently, registered their marriage in the Registrar Office at Domlur, Bangalore. Prior to marriage both of them have served in a Company and developed love with each other and subsequently, they got married. After marriage, the respondent has expressed her unhappiness in respect of financial status of the petitioner. The respondent has not evinced any interest in having sexual intercourse. Further, she is not having good health. The respondent has also developed illicit intimacy with one Chacko Kuruvilla in March 2000. The petitioner has found them in a compromising position. The respondent has levelled so many false allegations against the petitioner and also given a false police complaint. Since the respondent has not shown any interest in having sexual intercourse and since she has had illicit intimacy with the said Chacko Kuruvilla virtually she has caused cruelty to the petitioner. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

9. The main contention put forth on the side of the petitioner in H.M.O.P.No.1051 of 2010 is that prior to marriage both the petitioner therein and respondent have loved each other and subsequently got married on 05-07-1998 and both of them have been blessed with a male child on 14-01-2004 by name Adit. From inception of marriage, the respondent has shown indifferent attitude towards petitioner and in fact, the petitioner has met so many ordeals at the hands of the respondent and without any sufficient cause, she has been driven out from the marital aboard and further, she is always willing to live with the respondent. Under the said circumstances, H.M.O.P.No.1051 of 2010 has been filed for getting the relief sought therein.

10. The Trial Court after considering the divergent evidence available on record has dismissed H.M.O.P.No.131 of 2011 and allowed H.M.O.P.No.1051 of 2010.

11. On the basis of the rival contentions put forth on either side, the Court has to analyze the following points:

(1) Whether the respondent has had illicit intimacy with one Chacko Kuruvilla ?

(2) Whether the respondent has give false Police complaint?

(3) Whether the respondent has caused mental cruelty to the petitioner?

(4) Whether the petitioner is entitled to get a decree of divorce?

(5) Whether the respondent/petitioner in H.M.O.P.No.1051 of 2010 is entitled to get the relief of restitution of conjugal rights?

12. The learned Senior Counsel appearing for the appellant/petitioner in H.M.O.P.No.131 of 2011 has contended to the effect that the marriage between the petitioner and respondent has been performed on 05-07-1998 in accordance with Hindu Rites and Customary Practice at R.S. Puram, Coimbatore and the same has been registered in Registrar Office, Domlur, Bangalore and prior to marriage both of them loved each other and after marriage, the respondent has shown her unhappiness with regard to financial status of the petitioner and further, she has failed to co-operate with the petitioner for having sexual intercourse. In March 2000, the respondent has joined in Shift Four Software Services, Koramangalam, Bangalore and started to have adulterous relationship with one Chacko Kuruvilla, who is none other than the Manager of the said Company. The petitioner has found both of them in their Office in a compromising position. The respondent has used to give torture to the petitioner on several occasions and also given a false Police complaint. Under the said circumstances, the petitioner is having mental cruelty and therefore, H.M.O.P.No.131 of 2011 has been filed, whereas the respondent as petitioner has filed H.M.O.P.No.1051 of 2010 and the Trial Court without considering the trustworthy evidence adduced on the side of the petitioner in H.M.O.P.No.131 of 2011 has erroneously dismissed the same and erroneously allowed H.M.O.P.No.1051 of 2010 and therefore, the common order passed by the Trial Court is liable to be set aside.

13. The learned counsel appearing for the respondent/petitioner in H.M.O.P.No.1051 of 2010 has befittingly contended that the alleged adultery has taken place in the year 2000, as per the averments made in the petition filed in H.M.O.P.No.131 of 2011. If really such occurrence has had taken place as mentioned on the side of the petitioner, definitely, both the petitioner and respondent would not have given birth to a male child by name Adit on 14-01-2004. The petitioner has used to torture the respondent. Under the circumstances, she has been forced to leave matrimonial aboard and she has also written a letter to the concerned Sub-Inspector of Police and the Trial Court after considering the frivolous allegations made against the respondent and also after considering that she has been driven out from marital aboard without sufficient cause has rightly dismissed H.M.O.P.No.131 of 2011 and rightly allowed H.M.O.P.No.1051 of 2010 by way of passing a common order and therefore, the common order passed by the Trial Court is not liable to be set aside.

14. In fact, this Court perused the entire averments made in the petition filed in H.M.O.P.No.131 of 2011 wherein it has been clearly stated that prior to marriage both the petitioner and respondent have loved each other and the same has culminated in their marriage on 05-07-1998. After marriage, the respondent has shown her nonchalant attitude towards the petitioner and further, she has expressed her unwillingness to co-operate with him even for having sexual intercourse. Further, it is averred in the petition that on various occasions, the respondent has caused mental cruelty.

15. In the petition filed in H.M.O.P.No.1051 of 2010, it is stated to the effect that the respondent therein/ petitioner in H.M.O.P.No.131 of 2011 has tortured the petitioner and further it is stated that she has been forcibly driven out from marital aboard.

16. The main allegation made against the respondent/wife is that she has had illicit intimacy with one Chacko Kuruvilla and during March 2000, the petitioner has seen both of them in a compromising position in their Office.

17. The learned Senior Counsel appearing for the appellant/petitioner in H.M.O.P.No.131 of 2011 has advanced his entire argument only on the basis of the alleged illicit intimacy of the respondent with the said Chacko Kuruvilla. The

main argument put forth on the side of the appellant/petitioner in H.M.O.P.No.131 of 2011 is that on 31-07-2012, the respondent/wife has written a letter and the same has been marked as Ex-P2, wherein she has clearly admitted her illicit relationship with the said Chacko Kuruvilla.

18. In fact, this Court has perused Ex-P2. It is nothing but a scribbled note. On the side of the respondent/wife it has been clearly stated to the effect that Ex-P2 has not been written by her. It is true that in Ex-P2, a recital is found to the effect that the respondent/wife has had illicit intimacy with the said Chacko Kuruvilla. Since on the side of the respondent/wife, Ex-P2 has been clearly denied, the entire burden lies upon the appellant/husband to prove the same.

19. In the petition filed in H.M.O.P.No.131 of 2011, in so many places, it has been specifically pleaded to the effect that during March 2000 both the said Chacko Kuruvilla and the respondent have served together in a Company and he acted as a Manager and the petitioner has visited the said Office and found both of them in a compromising position. If really such occurrence had taken place in March 2000, a normal husband would not have had coition with his wife. In the instant case, it is an admitted fact that on 14-01-2004, the respondent/wife has given birth to a male child by name Adit and the same has also been accepted by the petitioner. The relevant birth certificate has been marked as Ex-P15.

20. At this juncture, the Court has to look into Ex-P4, a copy of the petition sent to Sub-Inspector of Police on 14-03-2010 by the respondent/wife. In fact, this Court has collated the letters found in Ex-P4 as well as letters found in Ex-P2 and in the said collation, this Court is of the view that Ex-P2 has not at all been written by the respondent/wife. Therefore, it is clear that on the basis of Ex-P2, the Court cannot come to a conclusion that the respondent/wife has had illicit intimacy with the said Chacko Kuruvilla. It is true that on the side of the appellant/petitioner in H.M.O.P.No.131 of 2011 some oral evidence is available. On that basis, it is highly impossible and improbable on the part of the Court to accept the contentions put forth on the side of the appellant/petitioner in H.M.O.P.No.131 of 2011. Further, as stated earlier, if really such relationship has had existed betwixt the respondent/wife and Chacko Kuruvilla, definitely, both of them would not have had coitus and due to that the respondent would not have given birth to a male child by name Adit on 14-01-2004. Therefore, the first contention put forth on the side of the petitioner in H.M.O.P.No.131 of 2011 is sans merit.

21. The second contention put forth on the side of the appellant/petitioner in H.M.O.P.No.131 of 2011 is that after sometime from the date of marriage, the respondent/wife has changed her attitude and also shown her real colour by way of torturing the petitioner, especially, she has given false Police complaint.

22. For the purpose of proving the said aspect, Ex-P4 has been filed. Ex-P4 is nothing but a copy of a petition alleged to have been sent by the respondent to the Sub-Inspector of Police on 14-03-2010, wherein the respondent/wife has narrated the torture meted out by her at the hands of her husband. Further, in Ex-P4 it has been clinchingly stated that the petitioner has tortured her, to give her consent for divorce. In the petition filed in H.M.O.P.No.131 of 2011 various allegations have been mentioned against the respondent/wife and to that effect, the petitioner has given evidence as P.W.1. All the allegations mentioned in the petition are trivial in nature. The respondent/wife has been examined as R.W.1 and she candidly denied all the allegations. Considering the fact that in Ex-P4, the respondent/wife has stated about the torture given by the petitioner and also considering that all the allegations mentioned in the petition are trivial in nature, the above contention put forth on the side of the petitioner cannot be accepted.

23. In the petition filed in H.M.O.P.No.131 of 2011 in most of the places it is stated to the effect that the respondent/wife has failed to co-operate with the petitioner for having sexual intercourse. If the respondent/wife has had such kind of behaviour, definitely, she would not have given birth to a male child by name Adit on 14-01-2004. Further, it is averred in the petition filed in H.M.O.P.No.131 of 2011 that the respondent is having some ailments. In fact, the Court has perused the documents to that effect and found that the alleged ailments of the respondent cannot be a ground for granting divorce.

24. It is an admitted fact that the respondent/wife as petitioner has filed H.M.O.P.No.1051 of 2010 on the file of the Court-below under Section 9 of the Hindu Marriage Act, 1955, whereby prayed to pass an order of restitution of conjugal rights. In that petition, wherein the respondent/petitioner has narrated the entire episode happened after marriage and ultimately stated that without sufficient reasons she has been driven out from marital aboard. Only during pendency of

H.M.O.P.No.1051 of 2010, H.M.O.P.No.131 of 2011 has been filed by the petitioner therein for getting divorce. It has already been pointed out that the alleged illicit intimacy of the respondent/wife with Chacko Kuruvilla has not at all been established on the side of the petitioner in H.M.O.P.No.131 of 2011 and the alleged torture and ill-treatment made against the appellant/husband by the respondent/wife have also not been proved. The Court-below after considering the rival evidence available on record coupled with documents filed on either side has found that all the allegations levelled against the respondent/wife by the petitioner/husband are not proved.

25. As pointed out earlier even this Court has analysed the main allegations levelled against the respondent/wife and ultimately, found that all the allegations made against the respondent/wife by the husband have not been proved.

26. In support of the contentions raised on the side of the appellant /petitioner in H.M.O.P.No.131 of 2011, the following decisions are relied upon:

(1) 2002 (2) SCC 296 (G.V.N. Kameswara Rao Vs. G. Jabilli) wherein it is held that false complaint and consequent loss of reputation and standing in society at the instance of one's spouse would amount to cruelty.

(2) 2006 (13) SCC 272 (Sujata Uday patil Vs. Uday Madhukar Patil) wherein the Honourable Supreme Court has held that cruelty is nothing but question of law and facts and the same has to be decided on the basis of facts and circumstances of each case.

(3) Manu/TN/2615/2011 (Nalini Muthu vs. Muthu), a Division Bench of this Court has held that since the husband and wife are not living together for a period of one decade and so many civil and criminal litigations are pending between them, the proper method is to dissolve their marriage.

(4) In Manu/SC/0180/2013 (K. Srinivas Rao Vs. D.A. Deepa) wherein it is held that making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the Court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.

(5) Manu/TN/848/2007 (J.Balasubramaniam Vs. S. Pitchammal) wherein it is held that in the Trial Court abundant evidence have been available so as to cause mental cruelty. Under the said circumstances, divorce can be granted.

27. The decisions referred to supra cannot attune to the facts and circumstances of this case. Further, on the side of the appellant/petitioner in H.M.O.P.No.131 of 2011, it has not been clearly established to the effect that on the basis of the complaint alleged to have been given by the respondent/wife, the petitioner has faced a criminal proceeding.

28. Therefore, viewing from any angle, the arguments advanced on the side of the appellant/husband is not having any acceptable force whereas the arguments advanced on the side of the respondent/wife is really having subsisting force and therefore, these Civil Miscellaneous Appeals are liable to be dismissed.

In fine, these Civil Miscellaneous appeals are dismissed without costs. The common order passed by the Trial Court in H.M.O.P.Nos.1051 of 2010 and 131 of 2011 is confirmed.

Consequently, C.M.P.Nos.2574 and 2575 of 2016 are also dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Judge,
Principal Family Court, Coimbatore.

+4cc to Mr.Nirmaleswar, Advocate Sr.39636,39635
+2cc to Mr.Udaya P.S.Menon, Advocate sr.39629

C.M.A.Nos.342 and 343 of 2016

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