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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.04.2018

PRONOUNCED ON : 03.10.2018

CORAM

THE HON'BLE MR. JUSTICE R.SUBBIAH
and

THE HON'BLE MR. JUSTICE P.D.AUDIKESSAVALU

C.M.A.No.1747 of 2016
Cross Objection No.51 of 2017
and
CMP.No.13093 of 2016
--

CMA.No.1747/2016

K.Sivarenjani

.. Appellant/Respondent

Versus

A.Sivakumar

.. Respondent/Petitioner

Cross Objection No.51/2017

A.Sivakumar

.. Cross Objector/Respondent

..vs..

K.Sivarenjani

.. Respondent/Appellant

Civil Miscellaneous Appeal and the Cross Objection have been filed against the order and decree dated 27.05.2016 passed by the learned Principal Judge, Family Court, Coimbatore in HMOP.No.1118 of 2010.

CMA.No.1747 of 2016

For Appellant : Mr.K. Thilageswaran
For Respondent : Mr. A. Muthukumar
Cross Obj.No.51 of 2017
For Cross Objector : Mr. A. Muthukumar
For Respondent : Mr. K. Thilageswaran

COMMON JUDGMENT

R. SUBBIAH, J.

By the order dated 27.05.2016 passed in HMOP No. 1118 of 2010 on the file of Principal Judge, Family Court, Chennai, the



Original Petition filed by the respondent/husband for granting a decree of divorce was dismissed, instead, a decree for Judicial Separation was granted. Challenging the validity and/or correctness of the said Order passed by the Family Court, granting a decree for Judicial separation, the appellant/wife has filed the Civil Miscellaneous Appeal. As against the very same Order, the husband/respondent has filed the Cross Objection contending that the Family Court is not justified in passing an order of Judicial Separation, instead, it ought to have granted a decree of divorce.

2. For the sake of convenience, the parties shall, hereinafter be referred to in this appeal, as per their litigative status in HMOP No. 1118 of 2010 as Petitioner (husband) and respondent (wife).

3. The petitioner/husband has filed HMOP No. 1118 of 2010 before the Family Court, Coimbatore contending that the marriage between him and the respondent/wife was solemnised on 23.08.2009 at Sankar Mahal Thirumana Mandapam, Erode, as per Hindu rites and customs. Before the marriage, an engagement was conducted and at the time of engagement, the petitioner was working in a company called ATKINS, Bangalore and the respondent was employed in a company called Honey Well Solution, Bangalore. Subsequently, the petitioner was sent on deputation by his employer to Cochin to a company called LULU as a Project Manager. It is the specific plea of the petitioner that even before his marriage, he has clearly informed the respondent and her parents that befitting his age and educational qualification, he had lot of prospects with offer for a lucrative salary out of India and therefore, he may get employed abroad after his marriage. It was further stated that the respondent and her parents have also agreed for such a proposal made by the petitioner. However, after marriage, the respondent had unreasonably prevented the petitioner from taking up employment abroad by giving frivolous complaint to the police.

4. As regards the matrimonial life, it is the contention of the petitioner that the respondent always indulged in quarrel for trivial reasons and portrayed an indifferent behaviour towards the petitioner. The respondent always uttered that she had been educated more than the petitioner and that she hails from a respectable family and thereby spoke ill about the petitioner and his family. It was also represented by the respondent that the petitioner is not the apt match for her and she insulted the petitioner in the midst of his relatives and friends. Notwithstanding the same, the respondent portrayed the petitioner and his family members to her parents in poor light, with the result, the parents of the respondent unnecessarily interfered in the matrimonial life of the petitioner and the respondent. Above all, the respondent restrained the petitioner



from taking up any employment out of India. The respondent also imposed a condition that the petitioner has to handover the entire salary received by him to her and that he should not spend any amount to his parents.

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5. According to the petitioner, he was in Cochin and he invited the respondent to join him at Cochin to celebrate the Diwali festival, but she not only refused to join the petitioner at Cochin but clearly uttered that she is no longer interested to live with the petitioner. On 17.12.2009, when he was conversing with the respondent over phone, the respondent switched on the speaker phone and spoke ill about him to her parents and thereby she caused untold mental agony and pain. Even at that time, the father of the respondent snatched the mobile phone from his daughter and threatened the petitioner with dire consequences and scolded him. According to the petitioner, he received an employment offer from Qatar and he arranged visa for himself and the respondent. After complying the formalities, the petitioner obtained visa for himself, however, visa for the respondent was issued for her travel eight months after the petitioner joins duty at Qatar. At this stage, since Visa could not be obtained to enable the respondent to accompany the petitioner on the same date, the respondent has given a complaint and prevented the petitioner from leaving India and also by falsely claiming that the petitioner is already married and due to such marriage a child was also born. On the basis of such complaint, the petitioner was subjected to enquiry as if the petitioner is a terrorist and indulged in such activity. Infact, three months prior to the marriage, the respondent and his parents wholeheartedly agreed for the petitioner leaving India to take up his employment at Qatar, however, for the reasons best known the respondent has given a complaint, as mentioned above. Further, based on the complaint given by the petitioner, an Inspector of Police by name Mr. Kadher, attached to the Special Investigation Wing and one Mr. Parthasarathy, Police Constable, barged into the house of the petitioner on 27.10.2009 under the guise of conducting enquiry and caused an intensive search. After such search, the parents of the petitioner were threatened by stating that if the petitioner leaves India for employment, they will be arrested and remanded to judicial custody. The police officials also refused to inform the grounds on which investigation is being conducted and as to who has given the complaint. The petitioner also later came to know that a Search Warrant has been issued against him. The petitioner therefore submitted an application invoking the Right to Information Act to ascertain as to on whose complaint a search was made and to furnish a copy of the complaint.

6. The petitioner would further contend that during 2009, the respondent conceived, however, without the knowledge and



consent of the petitioner, she aborted the pregnancy and it was also not informed to the petitioner. In such circumstances, the petitioner sent a notice dated 14.05.2010 calling upon the petitioner to give her consent for dissolution of the marriage, for which a reply notice dated 11.06.2010 was sent containing false and frivolous averments. The petitioner has thereafter filed the Original Petition for dissolution of the marriage solemnised on 23.08.2009 on the ground of cruelty.

7. Repudiating the averments made in the Original Petition, the respondent filed a counter affidavit contending inter that the averment that the respondent, after marriage, lived only for two days on 12th and 13th September 2009 is denied. The allegation that even during those two days, the respondent was indifferent towards the petitioner was also denied. The respondent also denied that before marriage, the petitioner informed the respondent and her parents about his intention to leave India in search of employment and that the respondent and her parents have consented for the same. It was also denied that the respondent behaved indifferently soon after the marriage. Further, the respondent did not speak ill about petitioner and his parents, as alleged. The respondent did not tease the petitioner and his parents over phone or scolded the petitioner by switching on the speaker in the mobile phone. The respondent also denied all other averments relating to the so-called false complaint given by her, based on which a search was conducted by the Police authorities and that the petitioner was not permitted to leave India. The respondent also denied as false that she aborted the pregnancy without the knowledge and consent of the petitioner or his family.

8. According to the respondent/wife, the petitioner's parents approached her parents in the year 2006 through their relatives viz., Gunasundari of Moolapathai and Ganesan of Andipalayam when the petitioner was employed abroad. Though the respondent and her parents consented for the marriage alliance with the petitioner in all other aspects, they did not agree for the petitioner leaving India after marriage and to settle with the respondent in a foreign country, due to which, the marriage proposal itself was dropped. However, once again, during March 2009, the said Gunasundari contacted the respondent's parents and informed them about the return of the petitioner to India, his employment at Bangalore and his intention to continue his work only in India. Therefore, the respondent's parents agreed for the marriage proposal and a betrothal function was commemorated on 10.07.2009 in the presence of the relatives and friends of both sides. At the time of marriage, the respondent's parents presented 45 sovereigns of gold jewels and 5 sovereigns of gold chain to the respondent and the petitioner presented 7 ½ sovereigns of gold Thali to the respondent. Further, the respondent's parents agreed to give Rs.4 lakhs for the purpose



of buying a car, apart from presentation of all household articles. According to the respondent/wife, the matrimonial life went on peacefully and blissfully. After the marriage, on 25.08.2009 and 26.08.2009, the petitioner and the respondent stayed in the house of the respondent at Coimbatore and on 27.08.2009, they went to the house of the petitioner. On 01.09.2009, as per the instructions from one Chandramohan, sister's husband of the petitioner, who is working as Sub-Inspector of Police, all the jewels worn by the respondent, except two chain, pair of bangle and a ear ring, were kept in the bank locker at Konganapuram Branch. It is further submitted that though the petitioner and the respondent were working at Bangalore in their respective companies, the petitioner was posted on deputation at Cochin branch, however, they decided to have their residence at Bangalore. The petitioner and the respondent also, in fact, searched for a house for rent at Bangalore from 02.09.2009 to 04.09.2009. Ultimately, they have zeroed in on an apartment at Ranga Colony and paid a token advance of Rs.5,000/-. They have also agreed to pay a sum of Rs.10,500/- as monthly rent and a sum of Rs.1,00,000/- as advance. However, the proposal to shift the house was dropped at the instance of the parents of the petitioner as they demanded Rs.12 lakhs worth household articles as a condition precedent for shifting the house to the new flat. As the parents of the respondent expressed their inability to provide the house hold articles, the proposal to shift the house was dropped and the petitioner and the respondent stayed at Sri Balaji accommodation. Subsequently, the petitioner went to Cochin and the respondent also stayed with him from 01.10.2009 to 05.10.2009 in the house provided to him by the employer. At this stage, the petitioner was invited by the parents of the respondent to celebrate the Thalai Deepavali festival for which he also agreed. The respondent was therefore sent to Bangalore by bus with an understanding that they can meet at Coimbatore in the house of the respondent on the eve of the festival. However, the petitioner did not keep up his promise and when questioned, he has stated that his parents were not properly invited for the function and therefore, he could not come to the house of the respondent for Deepavali. The fact remains that the parents of the petitioner were also invited by the parents of the respondent to attend the festival at Coimbatore. As the petitioner did not turn up for the auspicious festival, the respondent was very much disappointed and she was greatly disturbed. In this context, there were dispute between the petitioner and respondent. At this juncture, Mr. Chandramohan, sister's husband of the petitioner informed the respondent that he would talk to the petitioner and his parents to settle the matrimonial dispute, till such time, he instructed the respondent and her parents not to talk to the petitioner or his family members. Accordingly, the respondent waited for some days. As there was no response from the said Mr. Chandramohan,



the respondent contacted the petitioner but all the contact telephone numbers were switched off. Therefore, the respondent contacted the employer of the petitioner at Cochin and she was informed that the petitioner is likely to leave India for going abroad. When this was informed to Mr. Chandramohan, he assured the respondent that he will ensure that the petitioner will not leave India for any sort of employment. He also further informed that he had arranged a meeting among the elders on 12.12.2009 at Edappadi-Moolapathai. Accordingly, a meeting was arranged on 12.12.2009 in which the petitioner along with his relatives participated. In the meeting, the parents of the petitioner demanded 10 sovereigns of gold jewels and Rs.2 lakhs worth household articles from the respondent, but the parents of the respondent expressed their inability to provide the same. Ultimately, it was concluded that the respondent shall either get transfer of her employment from Bangalore or quit her job. The petitioner also assured that he will not go abroad for employment. Accordingly, both the petitioner and the respondent stayed together on 12.12.2009 and 13.12.2009 and thereafter, the respondent was sent to Bangalore. While so, on 21.12.2009, when the petitioner contacted the respondent through mobile phone, the petitioner informed the respondent that he had left India to Saudi Arabia and that he would return to India only after a period of six months. The petitioner further informed the respondent to stay in a Ladies Hostel till such time he returns to India. Notwithstanding the same, on 17.05.2010, the respondent was shocked to receive a notice from an advocate seeking divorce. According to the respondent, she is always ready and willing to resume the matrimonial life with the petitioner. In such circumstances, the respondent sought for dismissal of the Original petition.

9. Before the Family Court, the petitioner examined himself as P.W.1, besides examining his father as P.W.2 and marked Exs.P1 to P12. On behalf of the respondent, she examined herself as R.W.1, besides examining her mother as R.W.2 and marked Exs.R1 to R15 documents.

10. The Family Court, after examining the oral and documentary evidence, came to the conclusion that the petitioner has failed to prove his case that he was subjected to matrimonial cruelty and therefore, he is not entitled for decree of divorce, as prayed for. The Family Court, however, rendered a finding that the respondent had prevented the petitioner from leaving India for an employment. Further, the respondent did not prove that the petitioner and his family members demanded dowry and that they were instrumental for the separation of the petitioner and the respondent. Therefore, the Family Court, while refusing to grant a decree of divorce, granted an order of Judicial Separation. Aggrieved by the same, the present Civil Miscellaneous Appeal is filed by the respondent and cross



objection is filed by the petitioner.

11. The learned counsel for the petitioner/husband submitted that the petitioner sought for dissolution of marriage on the ground of cruelty. According to the counsel for the petitioner, the petitioner has proved, by oral and documentary evidence, that he was subjected to matrimonial cruelty by the respondent. It is his contention that the petitioner has clearly established that he was unreasonably prevented by the respondent to leave India for his employment. It is his case that even prior to the marriage, the petitioner has clearly stated that he had lucrative employment offer abroad and that he is likely to leave India abroad for employment. However, the respondent prevented the petitioner from leaving India and thereby restrained him from taking up a very good employment. This had an adverse impact in the career of the petitioner and thereby the petitioner was subjected to acute mental pain and harassment. Even though the respondent had alleged that one Gunasundari, who bridged the matrimonial alliance between the petitioner and the respondent, had assured the respondent that after marriage, the petitioner will not leave India, the said Gunasundari was not examined by the respondent to substantiate this allegation.

12. According to the counsel for the petitioner, on 12.12.2009, the respondent along with her 50 men, including a journalist, came to the matrimonial home in the guise of a compromise talk and created a commotion thereby the petitioner was subjected to shame and degradation in the midst of his neighbours. The respondent has not specifically denied the incident that took place on 12.12.2009. Therefore, it is contended that the petitioner had clearly established that he was subjected to matrimonial cruelty by reason of the respondent bringing in 50 persons, including a journalist, to the matrimonial home in the guise of a compromise talk, and thereby caused disrepute to the petitioner and his family members.

13. The learned counsel for the petitioner further submitted that the respondent, without the knowledge and consent of the petitioner, had aborted the pregnancy and thereby subjected the petitioner to acute mental agony and hardship. This was also admitted by the respondent in para-12 of the counter but she contended that the termination was due to medical complication and is natural. However, the respondent has not chosen to file any medical records to substantiate this averment.

14. It is further submitted that on 27.10.2009, on the basis of the complaint dated 27.10.2009 given by the respondent, police personnel swarmed into the matrimonial home, threatened the inmates that the petitioner should not leave India and also



petitioner, rather, the petitioner was fully aware of the medical complications that confronted during the pregnancy of the respondent and the necessity for an abortion. Further, the respondent, as RW1 and her mother, as RW2 have clearly narrated the sequence of events that led to the difference between the spouse. In any event, according to the counsel for the respondent, the differences or dispute that had arisen between the petitioner and the respondent are not such that it warrants a judicial separation. The averments made by the petitioner in the Original Petition are vague and bald and therefore, the Family Court ought not to have even granted an order of judicial separation. The respondent is always ready and willing to join the appellant in the matrimonial home and therefore, the learned counsel for the respondent prayed for setting aside the decree of judicial separation passed by the Family Court and to allow this appeal.

18. We have given our anxious considerations to the rival submissions and also perused the materials on record. In the light of the above submissions of the counsel for both sides, the following points emerge for our consideration and they are:-

(i) Whether the petitioner has made out a case for divorce on the ground of cruelty by the respondent?; and

(ii) Whether the decree of judicial separation granted by the Family Court is sustainable on facts and in law?

19. As we have dealt with the factual matrix of the case in detail, we confine ourselves with few facts, which are absolutely necessary for disposal of the appeal and cross-objection and not to venture into the entire factual matrix any further.

20. There is no dispute with regard to solemnization of marriage between the petitioner and the respondent on 23.08.2009. Even before completion of one year of marriage, the petitioner has filed HMOP No. 1118 of 2010 for dissolution of the marriage on the grounds of cruelty. Therefore, it has to be examined as to whether the petitioner was subjected to matrimonial cruelty at the instance of the respondent.

21. In order to show that the petitioner was subjected to matrimonial cruelty, he had stated in the Original Petition that the respondent stayed in the matrimonial home only for two days viz., 12.09.2009 and 13.09.2009 and thereafter, she went back to her parental home but did not return back despite of his repeated calls made till December 2009. The respondent came with 50 members under the guise of panchayat on 12.12.2009 and thereby brought disrepute to him and his family members. The



respondent prevented the petitioner from taking up an employment outside India. The respondent always projected herself as highly qualified than the petitioner and talked ill about the petitioner and his family. The respondent spent more time to speak with her parents over phone and passed on malicious information about the petitioner and his family. The petitioner was insulted while talking with the respondent over phone on 17.10.2009. The respondent spread rumor as if the petitioner had got married to another girl and has a child. The respondent lodged a police complaint and harassed the petitioner's family. The respondent aborted her pregnancy without the knowledge of petitioner when he was in Qatar. These are all some of the averments made by the petitioner in the Original Petition to demonstrate that he was subjected to matrimonial cruelty.

22. The above averments were denied by the respondent by filing a counter. The respondent had clearly stated in her counter the various dates on which she lived along with the petitioner at Chennai, Bangalore and at Cochin. However, the petitioner has projected as if the respondent, after marriage, lived only for a period of two days. In other words, the petitioner had suppressed the fact that the petitioner and the respondent stayed for a few days at Bangalore in a house called Vijay residency. He has also suppressed the fact that the respondent came and stayed with him at Cochin in the quarters provided by his employer for five days. This is clear from the fact that the petitioner did not file any rejoinder or reply to the counter filed by the respondent repudiating the aforesaid facts. This, in our opinion, is a suppression of material fact. The petitioner, in the Original Petition has not adverted to the fact that the respondent came and lived with him at Cochin for five days and the understanding between them to meet at Coimbatore on the eve of Thalai Deepavali. These facts are clearly spoken to by the respondent, as RW1 and it was also reiterated by the mother of the respondent, as RW2. Further, the various averments made by the respondent in the counter affidavit were not denied by the petitioner by filing any reply or rejoinder. In fact, during the cross-examination of PW2, father of the petitioner, he had stated that he does not know whether the petitioner and the respondent, after the marriage, had lived only for two days. Therefore, the averment of the petitioner that the respondent, after marriage, lived with him only for two days, has not been substantiated by the petitioner.

23. The next contention of the petitioner is that on 12.12.2009, the respondent brought 50 men to the matrimonial home, under the guise of compromise talk, created commotion and brought disrepute to him and his family members. This was denied by the respondent by stating that at the instance of Mr. Chandramohan, sister's husband of the petitioner, a compromise talk was held on 12.12.2009 in the house of Gunasundari, who



bridged the matrimonial alliance between the petitioner and the respondent and it is false to allege that the respondent had brought 50 men and threatened the petitioner. This averment was not specifically denied by the petitioner by filing a rejoinder. In fact, on perusal of the cross-examination of the respondent, RW1, on behalf of the petitioner, not even a suggestion was made with regard to the so-called incident that took place on 12.12.2009. Therefore, we are of the view that the petitioner has failed to substantiate that the respondent had brought 50 men to his house and allegedly sullied his image in the presence of the neighbours.

24. The other averment of the petitioner that the respondent aborted the pregnancy without his knowledge and consent was denied by the respondent as false. According to the respondent, due to medical complications, the pregnancy was aborted and it was also known to the respondent. In fact, in the cross-examination of RW1, she has categorically stated that during her pregnancy, she travelled to Cochin to meet the petitioner and it had resulted in her abortion. Thus, we are of the view that the petitioner has not proved by any material evidence that the respondent had aborted the pregnancy wilfully or such abortion is not due to any medical complication.

25. On perusal of the records, we could infer that the matrimonial rift has been caused due to the fact that the petitioner left India to Qatar for employment, without even informing the respondent and his family. The petitioner, being the husband, has a bounden duty to inform his wife, the respondent about his leaving India to a foreign country for employment and this is least expected. In fact the respondent categorically stated in the Counter that Gunasundari, who mediated the marriage alliance, has categorically informed that the petitioner has no intention to leave India for any employment and only thereafter, did the respondent and her family agree for the marriage proposal. However, the petitioner contends that even prior to the marriage, he informed the respondent and his parents about his intention to leave India for employment. In such circumstances, either the petitioner or the respondent ought to have examined Mrs. Gunasundari to substantiate this averment, but it was not done. In fact, in the cross-examination of the respondent, she has categorically stated that she has no knowledge about the petitioner leaving India. Therefore, the respondent has given a complaint complaining that the whereabouts of the petitioner are not known and that she wants to join the petitioner in the matrimonial home. It is on the basis of this complaint, an enquiry was conducted. At the time of investigation, admittedly, the respondent was in a foreign Country. This is evident from the cross-examination of the petitioner wherein he has stated that he reached Qatar on 21.12.2009. On the other hand, as mentioned



above, in the cross-examination of the respondent, she has stated that she has no knowledge as to when the petitioner left India. Having regard to all the above aspects, we are of the view that the petitioner has failed to substantiate that he was subjected to matrimonial cruelty by the respondent. The averments in the Original Petition are bald and vague and they do not constitute matrimonial cruelty, as defined under Section 13 (1) (i-a) of The Hindu Marriage Act. In effect, the averments made by the petitioner in the Original Petition are not sufficient to hold that the petitioner was subjected to matrimonial cruelty

26. A perusal of the deposition of the respondent as RW1 and her mother as RW2 would go to show that only on the assurance given by the relative of the respondent viz., Gunasundari that the petitioner would not go abroad for employment purpose, the marriage was organized, however, he did not keep up his assurance. As discussed earlier, the only allegation highlighted by the petitioner for divorce was that the respondent prevented the petitioner from going abroad for employment and except this allegation, no other serious allegation has been raised or substantiated by the petitioner. Even those alleged incidents pointed out by the petitioner will not fall under the definition of cruelty. However, the Family Court concluded that the petitioner has failed to establish the ground of cruelty and refused to grant divorce. When it was concluded by the Family Court that the petitioner-husband has not established any grounds to hold that he was subjected to matrimonial cruelty by the respondent/wife, the Family Court ought not to have granted a decree for judicial separation. It is well settled that only in the event of the Court coming to the conclusion that allegations relating to cruelty has been proved by one of the parties to the Original Petition, as an alternative relief, a decree of Judicial Separation can be granted. In this case, the Family Court has come to the conclusion that the allegations relating to cruelty has not been established by the Petitioner. In such circumstances, granting a decree of judicial separation does not arise. The Family Court, having dealt with the evidence placed on record by the parties, ought to have either granted a decree of divorce or refused it, instead of granting a decree of judicial separation, which is not warranted in the facts and circumstance of this case.

27. In the result, we allow the Civil Miscellaneous Appeal by setting aside the order and decree dated 27.05.2016 passed by the learned Principal Judge, Family Court, Coimbatore in HMOP.No.1118 of 2010 and dismiss the Original Petition.



Consequently, the Cross objection stands dismissed. No costs.
Connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Judge,
Family Court, Coimbatore.

2.The Section Officer,
VR Section,
High court, Madras.

+lcc to Mr. A. Muthukumar, advocate sr.no.68001
+lcc to Mr. K. Thilageswaran, advocate sr.no.68335

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