

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 27.06.2018

Judgment Pronounced on: 20.07.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMSA.Nos.23 & 24 of 2016
and CMP.No.9677 of 2016 in CMSA.No.23 of 2016

M.Yuvaraj

... Appellant in both CMSA/Petitioner

Vs

Mangayarkarasi

... Respondent in both CMSA/Respondent

Common Prayer :- Civil Miscellaneous Second Appeals filed under Section 100 of CPC, against the judgment and decree dated 18.11.2015 made in CMA.No.71 of 2011 and CMA.No.90 of 2011 on the file of IV Additional District and Sessions Court, Coimbatore confirming the fair and decretal order dated 26.11.2010 made in HMOP.No.13 of 2010 and HMOP.No.27 of 2008 respectively on the file of Subordinate Court, Pollachi.

For Appellant : Mr.Sridhar
(in both CMSAs) for Mr.R.Bharath Kumar

For Respondent : Mr.M.R.Thangavel
(in both CMSAs)

JUDGMENT

1.1 The appellant before this Court is the husband of the respondent. The couple had married on 08-04-2005, and they loved and married. The fact that the wife is some 6 or 7 years older than her husband did not matter when they loved.

1.2 The journey through the marriage was not pleasant for the couple as they found themselves caught in a storm of internal family differences. The husband would blame it on the wife for the state of affairs and moved the Family Court, Coimbatore in H.M.O.P.No.65 of 2007, seeking dissolution of his marriage with the respondent on the ground of cruelty. This dispute was stated to have been resolved when the wife appeared before the Family Court, made an endorsement that she would dissolve her differences with her husband and join him. The parties re-united but then, it did not last long, and on 12.04.2007, the wife left husband's company voluntarily.

2.1. After a couple of months, on 04.06.2007, the husband preferred H.M.O.P.No.532 of 2007 before the Family Court, Coimbatore for dissolution of his marriage, on the ground of cruelty. During the pendency of this proceeding, the wife had preferred a criminal complaint under the provisions of Dowry Prohibition Act, before the concerned Police. This complaint was taken on file on 24.11.2007 in Crime No.401 of 2007. After investigation, the case was charge sheeted and the learned Magistrate had taken cognizance of the offence in C.C.No.149 of 2008. After filing this criminal complaint, the wife preferred H.M.O.P.No.27 of 2008 on 11.03.2008 before Sub Court, Pollachi, for restitution of conjugal rights. The wife then moved this Court to have the case filed by the husband before the Family Court, Coimbatore, transferred to Sub-Court, Pollachi. On transfer, the case of the husband for divorce was taken on the file as H.M.O.P. 13 of 2010.

2.2 One of the grounds, the husband has taken up before the trial court was that the wife had preferred a criminal case without any basis, in which the husband has spent a week in jail before he obtained bail. The trial court by a common order dated 26.11.2010, separated the matrimonial case from the criminal case and dismissed the case of the husband and decreed the case of the wife.

2.3 The husband preferred two appeals, one against the order dismissing his petition for dissolution of marriage and the other appeal filed against the order granting a decree of restitution of conjugal rights to the wife. The IV Additional District Court dismissed both the appeals, against which, the present Civil Miscellaneous Second Appeals have been filed.

3. The learned counsel for the appellant has made the following submissions:

- a) Ever since the date of marriage, the couple never lived in the house of the husband's parents. This, the wife concedes in her chief examination as RW1.
- b) Having made an endorsement that she would live peacefully with her husband in H.M.O.P.No.65 of 2007, the wife had left the company of the husband on 12.04.2007, that she did not prefer any police complaint instantly, but waited till the husband preferred the present H.M.O.P. for dissolution of marriage, for preferring her complaint to the police. She would then pretend innocence and filed the petition for restitution of conjugal rights.
- c) In her petition for restitution of conjugal rights, she had mildly indicated about her complaint to the police, but would attempt to explain it away as one done under ill advise. Notwithstanding this fact, she continued to

prosecute the criminal case and had deposed to the effect that she had filed the criminal case so that her husband was punished. On 15.12.2015, the trial court acquitted the husband and his parents of all charges of dowry harassment, and this judgment has become final.

3.2 The fact that the criminal complaint laid against the appellant was proved false, when the criminal court acquitted all the accused persons in C.C.No.149 of 2008, for want of evidence and this instantly vindicates the husband. Making a false criminal complaint implicating the husband and his parents would be an act of inflicting mental cruelty and nothing more needs to be demonstrated than this indisputable fact to prove the cruelty that the wife had perpetrated.

4.1 The counsel for the respondent submitted that so far as the criminal case judgment goes, the learned Magistrate has only granted benefit of doubt to the accused and acquitted him and has not held that the case was falsely instituted and granted a honorary acquittal to the husband. If for a moment this is kept aside then the petitioner's case falls squarely on the facts on which he relies on for constituting a cause of action. These facts have already been disbelieved successively by the Courts below.

4.2. Secondly, the cause of action in this petition for divorce, which the appellant/petitioner has relied on is only on the ground of desertion, and not on cruelty, and both the Courts below have discussed them threadbare in the respective orders.

5. The Civil Miscellaneous Second Appeals are admitted on the following substantial questions of law :

1. Whether the courts below are correct and justified in failure to dissolve the marriage of the appellant and respondent on the ground of mental cruelty, when particularly the alleged complaint dated 24.11.2007 for dowry harassment lodged by the respondent against the appellant and her in-laws and the consequent arrest by the police would unquestionably constitutes cruelty as postulated in section 13(1)(ia) of the Hindu Marriage Act?
2. Whether the judgments of the courts below in dismissing the petition for divorce overlooking the subsequent event regarding the lodging of false criminal complaint by the respondent-wife for dowry harassment against the appellant and her in-laws are sustainable in law?
3. Whether the judgment of the courts below are correct and justified when particularly the criminal prosecution initiated in C.C.No.149 of 2008 on the file of the

Judicial Magistrate No.2, Pollachi for dowry harassment is ended in Honorary acquittal?

4. Whether the judgment of the courts below are perverse?

6.1. The husband has laid the petition for dissolution of marriage on the grounds of mental cruelty and desertion. In fact, there was an earlier petition filed by the husband in HMOP.No.65 of 2007, seeking dissolution of marriage. The copy of this petition is available on record as Ext.P-2, and it was instituted on grounds of cruelty. The present petition, to a large extent is a substantial reproduction of Ext.P-2. What is added is paragraph 12, wherein the petitioner has alleged that post the disposal of HMOP.No.65 of 2007, the respondent lived with him only for five days, abused him filthily and on 11.04.2007, she again left his company. This would imply that when once the earlier dispute was resolved, it can always be said that the cruelty if any, till that date had been condoned. What now remains is the conduct of the respondent thereafter. In her counter, the respondent would allege that after the disposal of HMOP.No.65 of 2007, she had gone to live with her husband, that there was also some dowry-harassment and left with no option, the respondent had to leave her husband's company. Here it is necessary to note that the husband's specific allegation against the wife was that she lived only for five days, that specifically denied. She would then say that she was constrained to file a criminal complaint for dowry harassment, but as per the additional document, namely the judgment in C.C.No.149 of 2008, now filed Vide C.M.P.No.9677 of 2016, the complaint was given before the police not immediately after her separation on 11.04.2007, but a few months later, on 24.11.2007, not only against the husband, but also against his parents.

6.2. The accusation made in the complaint seems to be that the respondent/wife has harassed from 04.04.2007 to 03.08.2007. However, H.M.O.P.No.13/2010 was originally filed (as HMOP.No.532 of 2007) before the Family Court, Coimbatore, on 04.06.2007. The respondent/wife needs to explain more on this incongruencies, which are not just limited to the above referred to facts, but also to her conduct.

6.3. Admittedly, the judgment in C.C.No.149 of 2008 has ended in acquittal and has become final. Therefore, without any need to prove the contra, this document can be admitted in evidence as Ext.P-6.

7. Ext.P-6 proves that the wife's allegation of dowry harassment is false. It is not whether the acquittal is founded on the

holding the institution of the criminal case itself is false. It is all about what impact it would have had in the husband: Will he be pleased to stand a criminal trial. And when he is acquitted, does it not vindicate his innocence? Any, why the parents of the husband were roped in to stand a criminal trial? Will not husband plunge into despair and helplessness? This is the issue. If preponderance of probability is the rule of thumb that Courts readily apply to resolve civil disputes, then the burden is cast on the respondent/wife to place necessary evidence of such quality that would preponderate a probability against the inference that a Court would logically derive from what her husband has placed before this Court. The respondent/wife had placed no such evidence.

8. In conclusion, both the Civil Miscellaneous Second Appeals are allowed and the judgment and decree dated 18.11.2015 made in CMA.No.71 of 2011 and CMA.No.90 of 2011 on the file of IV Additional District and Sessions Court, Coimbatore, confirming the fair and decretal order dated 26.11.2010 made in HMOP.No.13 of 2010 and HMOP.No.27 of 2008 on the file of the Subordinate Court, Pollachi, are set aside and the marriage between parties hereto stands dissolved. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To:

1. The Sub Judge, Pollachi
2. The IV Additional District and Sessions Judge, Coimbatore.

+1cc to MR.R.Bharathkumar, Advocate SR.NO.49013

+2cc to Mr.C.Anbu, Advocate SR.NO.48387

KGK(CO)

sm:13.11.2018

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