

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

and

THE HONOURABLE MR.JUSTICE C.SARAVANAN

Civil Miscellaneous Appeal No.2939 of 2017

Meenakshi Appellant /Petitioner

Vs.

A.Selvakumar Respondent /Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 19 of Family Court Act 1984 to set aside the fair order and decretal order dated 02.01.2017 made in F.C.O.P.No.48 of 2016 on the file of the learned Judge, Family Court, Chengalpattu.

For Appellant : Mr.K.Elangovan

For Respondent : Mr.K.Varadharajan

J U D G M E N T

C.SARAVANAN

The appellant (wife) has filed the present appeal against the impugned fair and decretal order dated 02.01.2017 (impugned order) passed by the Family Court, Chengalpattu in F.C.O.P.No.48 of 2016.

2. By the impugned order, the Family Court has dismissed the application filed under Section 13(1)(1-a)(1-b) of the Hindu Marriage Act, 1955. The appellant had alleged cruelty and desertion by the respondent (husband) and therefore prayed for dissolution of marriage.

3. The marriage was solemnized on 15.02.2013 between the appellant and the respondent. The appellant and the respondent lived together in husband's parent's house for some time and thereafter in Hosur for about three months independently as a nuclear family.

4. Some time during the end of November 2013 and beginning of 2014 the respondent appears to have been asked to report to duty in Goa / Maharashtra. In connection

with the same, it is alleged that the 1st respondent asked the appellant to get money from her family which has been denied by the respondent.

5. It has been alleged that the appellant was unable to get the required amount and therefore the respondent is alleged to have expressed his frustration and had asked the appellant to commit suicide by hanging with the help of a saree which he allegedly tied to fan and locked his house went away for work. There are records to show that the brother of the appellant and respondent had ended up having scuffle with each other and assaulted each other when they got involved in the marital discord between the appellant and the respondent.

6. On 14.01.2014, the appellant appears to have filed a complaint before the Hosur Police Station, pursuant to which the feuding parties called and were pacified.

7. The appellant was asked to return back to her parent's house. With effect from 18.01.2014, the appellant stayed with the parents. Appellant later demanded return of domestic items (seethanam) and the jewels given at the time of the marriage by her family. The respondent alleged that the appellant misused the ATM card and withdrew Rs.20,000/- without his knowledge.

8. In this connection, separate rival complaints have been filed by either side before the jurisdictional police station in Chengalpattu and Sriperampudur respectively and the respondent's family ostensibly undertook to return the same. However, the respondent's family failed to return the jewels and domestic items given as seethanam.

9. Thereafter, the appellant issued a legal notice dated 19.09.2014 vide Ex.P.8. The respondent sent a reply vide Ex.P.9 dated 29.09.2014. The appellant thereafter sent Ex.R.4 rejoinder dated 06.10.2014 to the said reply.

10. The respondent in his reply and counter has alleged that the appellant was having illicit relationship with strangers and refused to give particulars and that on a particular date she was found travelling on a bike with a stranger by name kumar.

11. The respondent alleged that the appellant had expressed her disappointment for having got married to the respondent. The respondent also alleged that the appellant did not co-operate for a checking her health and had asked him to give her sesame seeds to dissolve the foetus and that she verbally abused him.

12. Though the respondent made these allegations and has questioned the appellant's chastity, he has also stated that he was willing to live with the appellant. The respondent also submitted that he did not require any money for re-location in Maharashtra/Goa as the Company defray the entire expenses for such re-location.

13. We have gone through the records of the case and heard the arguments advanced by the parties. There has been intermittent quarrel and misgivings between the appellant and the respondent right after the marriage which vitiated the atmosphere in matrimonial home. The parties have given rival complaints against each other before the concerned police stations and temporary truce was arrived. According to the petitioner, even when the respondent's father scolded the appellant, the respondent kept quiet. The appellant is living separately from the respondent, hence the conduct of the respondent amounted to cruelty and ill-treatment and therefore, the appellant is entitled for divorce from the respondent.

14. Though cruelty has not been defined under the Act, the Hon'ble Supreme Court in *Samar Ghosh v. Jaya Ghosh* [(2007) 4 SCC 511], while considering Section 13(1)(i-a) of the Act laid down certain guidelines. The analysis and ultimate conclusion read as under:

"98. On proper analysis and scrutiny of the judgments of this Court and other courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts

and circumstances while taking the aforementioned factors into consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and

emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

15. The facts of the present case hardly measures to infer mental cruelty. The grievance of the appellant appear to be too trivial to warrant a decree of divorce. Though cruelty and desertion are grounds for granting divorce, neither cruelty nor desertion has been established either in the pleading or in the evidence before the Family Court. There is no serious allegation of cruelty in the pleadings or evidence.

16. The parties have hardly lived together after marriage. After initial separation after the alleged incident on 14.01.2014, they have been away from each other. Thereafter, the appellant issued legal notice vide Ex.P.8 dated 19.09.2014 and the respondent issued reply vide Ex.P.9 dated 29.09.2014 followed by Ex.P.24 rejoinder by the appellant.

17. Barring the above allegation in para-13 and the deposition of the appellant that the respondent's parents threatened the appellant to undo the marriage in public in the same manner as the marriage was solemnized, cruelty by the respondent to the appellant has not been proved. Petty quarrel between the appellant and the respondent has led the appellant to file frivolous petition to dissolve the marriage on the ground of mental cruelty and desertion. The respondent has not deserted the appellant. The turn of events have separated them.

18. It is evident, though the respondent has questioned the appellant's character and has alleged that she lacked probity and character they were made to chastise the appellant and to hurt the appellant's feeling. At the same time, the respondent has expressed his desire to live with the appellant.

19. It is evident, both the parties have not been truthful and have rushed to the Police Station and thereafter to the Court instead of approaching marriage counsellors to find solution to the problem.

20. Had they not approached the Police Station and thereafter the Family Court, the adjustments issues between newly wed couple would have inevitably got sorted out with efflux of time. Unfortunately, the appellant rushed to the Court and was ill-advised to apply for divorce.

21. In our view, the Family Court after considering the arguments and evidence on record has correctly come to a correct conclusion that complaint in the petition are too trivial to grant divorce. Divorce cannot be granted in a casual manner.

22. We are of the view that the Family Court has also correctly held that the particulars of the cruelty as complained have not been pleaded with materials particulars of date and month and has rightly concluded that there is no proof that the respondent either deserted the appellant or was cruel to her.

23. Reliance placed on the decision of this Court in Vallabhi vs. R.Rajasabhai 2016-5-L.W 554 by the Family Court to dismiss the petition filed by the appellant in our view is correct.

24. We therefore find no reason to interfere with the order of the Family Court dismissing the order of the petition filed by the appellant to dissolve the marriage on the ground of cruelty.

25. Having held that there was no case made out in the appeal the parties are advised to approach the family counsellor/therapist to restart their marital life afresh by putting the past behind them.

26. This civil miscellaneous appeal accordingly dismissed with the above observation. No cost.

Sd/-
Assistant Registrar (CS VII)

//True copy//

Sub Assistant Registrar

kkd

To
The Family Court,
Chengalpattu.

Copy To
The Section Officer,
VR Section, High Court,
Madras.
+1cc to Mr.K.Elangovan, Advocate SR.No.48582

C.M.A.No.2939 of 2017

PA (CO)
GN(31/08/2018)

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