

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 17.09.2018	Delivered on 12.10.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.2291 of 2014

P.Vasanth

... Appellant

-VS-

K.S.Kumar

... Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, to set aside the judgment and decree in O.P.No.1025 of 2001, order dated 23.01.2014, by the Learned Principal Family Court at Chennai- 600 104, in so far as the grant of divorce on the ground of cruelty and dismiss said petition by allowing this appeal.

For Appellant : Mr.A.Ramasamy
Sulochana Devarajulu

For Respondent : Sole respondent
No Appearance

J U D G M E N T

R.SUBRAMANIAN, J.

The wife who suffered by a decree for divorce on the ground of cruelty in OP No.1025 of 2001 on the file of the Principal Family Court at Chennai is the appellant.

2. The Original petition was filed by the husband seeking divorce on the ground that the respondent wife has treated him with cruelty and that she had converted into Christianity. The marriage was solemnized at 19.02.1995 at Pettai in Tirunelveli District. After the marriage, the spouses set up a residence at No.6, Thanikachalam Nagar, Kolathur, Chennai -600 099.

3. According to the husband, the marital life became miserable within a few months of marriage. He would claim that the activities of the respondent wife had caused unbearable mental torture and cruelty. It is claimed that the appellant never allowed the respondent husband to do his business peacefully. He claimed that the mother of the respondent who came and stayed with them for more than a month promising to advice the respondent, however took her daughter along with all the household articles and left the matrimonial home at 13.10.1997. It is also stated that she wrote

in a bond paper stating that she is not interested in continuing in the matrimonial bond signed the same and handed it to the husband. Despite, several attempts made by the husband for rejoining through relatives and friends, the appellant did not show any interest in joining with him. While so, in 1999, the business carried on by the respondent husband ran into loss and he almost became bankrupt. At that time, the appellant wife came back to Chennai but she refused to stay with his parents forcing him to set up a separate residence at Kolathur for the appellant wife and she stayed in the house rented by him. She would not allow the husband to stay with her, she would frequently torture him for money and the husband also obliged by paying whenever she demanded money. Due to the ill treatment suffered, the husband suffered heart attack and was hospitalized, even during the hospitalization period the appellant wife did not bother to visit him in the hospital. Despite his poor financial status he had borrowed money for interest in order to manage a decent living. It is claimed that the appellant wife fabricated several stories claiming that he is having an illicit intimacy with one Sumathi who was working in the business concern run by the husband. He would also contend that the appellant wife lodged a police complaint in Kolathur Police Station against him and his family members. Despite of assurance given by the husband in the Police Station that they would lead a normal life, the appellant wife did not co-operate and continued in her own

way. Claiming that the actions of the appellant wife resulted in mental and physical cruelty, the husband sought for divorce. It is the further case of the husband that the appellant removed her Thali and when enquired about it she claimed that she had converted to Christianity. This conversion was also made a ground for seeking divorce.

4. The appellant wife resisted the petition denying allegations of cruelty as well as the conversion. The claim of the husband that she left the matrimonial home was also denied by the wife. According to her she was in fact chased away by the husband without any reason. At the time of marriage, according to the wife, the husband had claimed that he was owner of a Automobile shop, but after marriage she discovered that he was only working in the Automobile shop and he was not the owner. She would also claim that some time after marriage he stopped working and started asking money from her parents. She would also claim that the parents of the respondent husband demanded dowry in the form of jewels and other household articles. The said demands were met by her parents with great difficulty on the sole belief that the husband was well placed in life and owing an Automobile shop. She would also claim that he had married one Sumathi and he is living with her. It is also contended that the said Sumathi had given birth to a child through the respondent.

5. The Family Court which heard the original petition framed the following point for determination:

Whether a decree for divorce is to be passed as prayed for by the petitioner?

Before the Family Court, the husband examined himself as PW1 and wife was examined as RW1. Exhibits P1 to P15 were marked on the side of the petitioner and Exhibits R1 and R2 were marked in the side of the respondent. On the appreciation on the evidence of record, the Family court concluded that the conduct of the wife in denying the ailment suffered by the husband and her claim that he has married one Sumathi being a false claim would constitute cruelty. The Family Court, however, found that the claim that the appellant wife had converted to christianity has not been established. On the above conclusions, the Family Court granted divorce on the ground of cruelty only. Aggrieved the wife has come forward with this appeal.

6. We have heard A.Ramasamy learned counsel for the appellant.

The respondent husband who was served with notice has not chosen to appear either in person or through the counsel.

7. Mr.A.Ramasamy learned counsel for the appellant would contend that the allegations made by the husband in the petition even if true

would not constitute cruelty as defined under the Hindu Marriage Act enabling the Family Court to grant divorce. The Family Court found that the appellant has come out to with a false case that the husband had married one Sumathi and that he does not own an Automobile shop relying upon the documentary evidence in the form of P7 and P8 which is the certificate of registration in the Commercial Department and Dealership agreement between the husband and Bajaj Automobiles. The Family Court concluded that despite knowing fully well that the husband was doing automobile business as a dealer of M/s.Bajaj Automobiles in the name of the Sri Kumaran Motors the appellant wife had lied about the status of the husband. The Family Court also took note of Ex.P12 the discharge summary issued by Sri Devi Hospital and, Ex. P.13 ECG report to conclude that wife had purposely denied the fact that the husband had suffered a heart attack. The Family Court had also found that the conduct of the wife in giving false police complaints would enable him to seek a decree for divorce.

8. Mr.A.Ramasamy learned counsel for the appellant wife would draw our attention to the evidence of the husband as PW1 and contend that there is no proof for the alleged acts of cruelty said to have been committed by her. He would draw our attention to the evidence of husband in cross-examination where he had deposed as follows:

“என் மனைவியுடன் இருக்கும்போது விவாகரத்து மனு தாக்கல் செய்ய முடியாது என்பதால் என் அண்ணன் வீட்டிற்கு வந்து அங்கிருந்து விவாகரத்து மனு தாக்கல் செய்தேன்.”

9. Based on the above statement made in cross-examination, Mr.A.Ramasamy would contend that the husband had come forward with the false case after leaving the matrimonial home. He would also point out that the respondent husband had admitted that he had used the jewels of the wife for the purposes of his business. He would also pointed out that the police complaints were given only with the view to seek reunion to buttress his contention of absence of cruelty. Mr.A.Ramasamy would rely upon the evidence of the husband in cross-examination wherein he has clearly stated that the appellant wife lodged a complaint to the police on 16.08.2001 seeking reunion, he would also point out that the contents proof affidavit filed by the husband is not supported by pleadings and the said fact has been admitted by the husband in his cross-examination as PW1. Taking us through the entire deposition of PW1 as well as RW1, Mr.A.Ramasamy would contend that no case has been made out for grant of divorce. He would submit that the Family Court erred in assuming that the mere fact that the police complaints were given by the wife against the husband, that too seeking reunion, would amount to cruelty. He would also contend that the claim of the husband that the wife had accused him of second marriage is incorrect. We have perused the entire

evidence of PW1 as well as RW1. It is seen that the wife has taken a stand that the husband was not the owner and was only working in Automobile shop under one Sumathi. Documentary evidence has been placed before the court to show that the husband was in fact a dealer of M/s. Bajaj Auto and was owning the Automobile shop in the name of Sri Kumaran Automobiles. But the said claim of the wife, alone, in our considered opinion cannot provide a ground to the husband to seek divorce on the ground of cruelty. As regards the police complaints, the husband himself has admitted that he had gone to Tirunelveli to meet her parents to complain about her behaviour and it is only at that time the wife lodged a complaint seeking reunion on the belief that the husband had deserted her. It also seen that the husband had agreed to live together before the police when enquiry was conducted on the complaint made by the wife. The said fact is admitted by the husband also. The police complaint was given sometime in March 2001 on the appellant wife have gave birth to the female child on 28.06.2001. This would definitely show that the husband has condoned the cruelty committed before the said date.

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10. We are, therefore of the considered opinion that the Family Court was not right in concluding that the mere fact that a police complaint was made by the wife against the husband would amount to cruelty. Though, the husband had claimed that he had set up a separate residence at Kolathur,

and the wife did not allow him to live in the said house, the fact that a female child was born to the appellant on 28.06.2001 would show that they have been living as husband and wife in the separate residence setup in 1999. The claim of the husband that the wife treated him with cruelty and he never stayed in the house which was setup in the year 1999 is belied by the fact that the wife has gave birth to female child child on 28.06.2001.

11. The learned Principal Judge Family Court overlooked claim of the wife that she was forced to sign as Ex.P10. The learned Family Judge concluded that the complaints given by the wife were not with the intention of reunion with the husband, overlooking the fact that it was the specific case of the wife/appellant police complaints were given only with an object of reunion. The Family Court also took note of the fact that the parties were not living as husband and wife since the filing of the divorce petition overlooking the fact that the same cannot be the sole ground for grant of divorce. We, therefore, find that the Family Court has erred in granting of divorce admit ground of cruelty. We are therefore, of the considered opinion that the

judgment of the Family Court needs to be set aside and it is accordingly set aside. The appeal stands allowed and the petition for divorce in O.P.No.1025 of 2001 will stand dismissed. However, there will be no order as to cost. Consequently, M.P.Nos.1&2/2014 are closed.

(K.K.SASIDHARAN, J.) (R.SUBRAMANIAN, J.)

12.10.2018

Index : Yes/ No

Internet : Yes/ No

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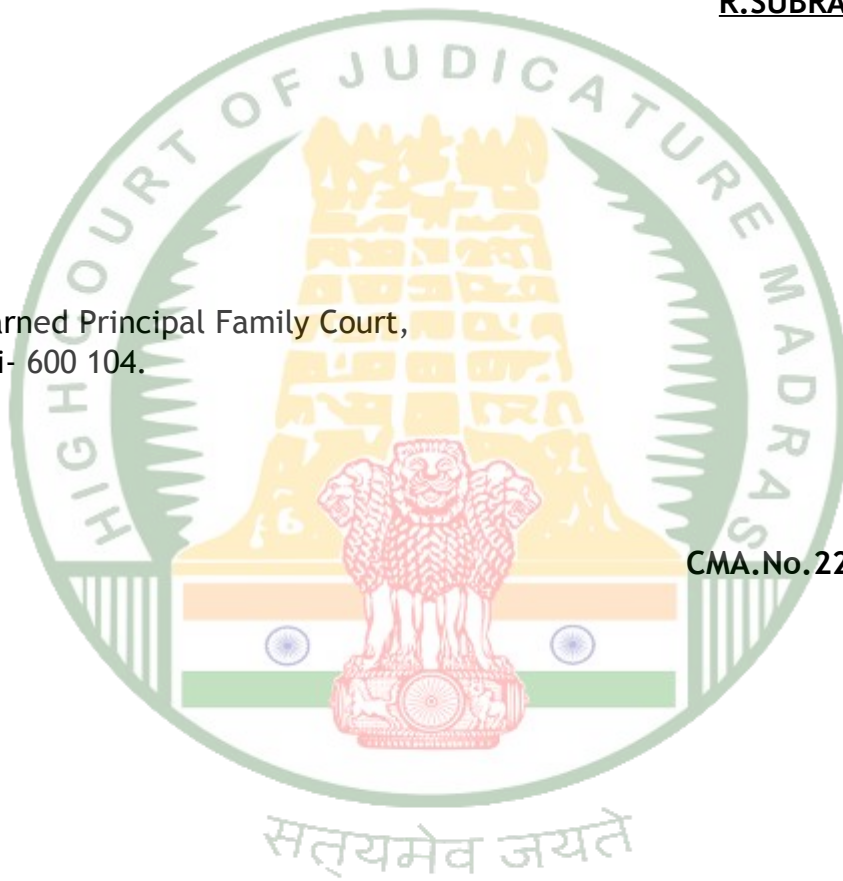
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K.K.SASIDHARAN, J.
and
R.SUBRAMANIAN, J.

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To

The Learned Principal Family Court,
Chennai- 600 104.



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