



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Pronounced on : 22.06.2018

Pronounced on : 02.08.2018

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THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

CMSA(MD)No.24 of 2014

A.B.Natarajan .. Appellant/Appellant/Petitioner

-Vs-

S.Mala .. Respondent/Respondent/Respondent

Prayer: This Civil Miscellaneous Second Appeal has been filed under Section 28 of Hindu Marriage Act and r/w. Section 100 of C.P.C., to set aside the Judgment and decree dated 01.10.2013 passed in H.M.C.M.A.No.5 of 2011 on the file of VI Additional District Court, Madurai, confirming the fair and decretal order dated 30.04.2011 passed in H.M.O.P.No.362 of 2008 on the file of the III Additional Sub Court, Madurai by allowing this Civil Miscellaneous Second Appeal.

For Appellant : Mr.V.Meenakshisundaram

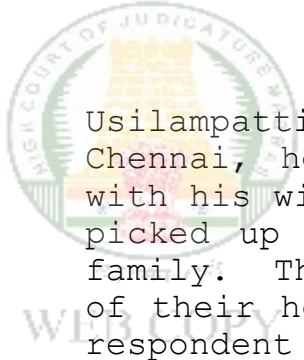
for Mr.D.Nallathambi

For Respondent : Mr.Babu Rajendran

ORDER

This Civil Miscellaneous Second Appeal has been filed by the appellant to set aside the judgment and decree passed by the learned VI Additional District Judge, Madurai in H.M.C.M.A.No.5 of 2011 dated 01.10.2013 confirming the fair and decretal order passed by the learned III Additional Sub Judge, Madurai, in H.M.O.P.No.362 of 2008 dated 30.04.2011.

2.The appellant is the husband and the respondent is the wife. The marriage between the appellant and the respondent was solemnized on 28.05.2007 at Usilampatti according to Hindu Customs and Rites in the presence of their elders. At the time of marriage, the appellant was studying second year in Madras Law College and the respondent was temporarily working as Team Leader in B.S.N.L. after completing her M.C.A. and M.Phil. After the marriage, the appellant and respondent were living in the appellant's house at



Usilampatti for some time and as the appellant was studying in Chennai, he used to come to Usilampatti twice a month and stayed with his wife nearly for five days. While so, the respondent / wife picked up a quarrel with the appellant for setting up a separate family. Thereafter, the parents of the appellant allotted a portion of their house to have a separate family for the appellant and the respondent with all facilities. In such circumstances, the respondent resigned her job as Team Leader in B.S.N.L at Chennai and joined as Lecturer in Pasumpon Muthuramalinga Thevar College, Usilampatti.

3. In the meantime, misunderstanding developed between the appellant and respondent as the respondent threatened the appellant saying that she will send the appellant and his family members behind the bar by lodging a case of dowry demand. Thereafter, she started spreading rumours that the appellant is going to marry one of his relatives and also threatened of committing suicide in the event of the appellant talking to his parents. It was the further case of the appellant that on 11.09.2008, when the appellant went to attend the marriage of his wife's brother without invitation, there was a wordy quarrel over the jewels between the appellant and the brother of his wife, which resulted in registration of a case in Crime No.404 of 2008 on the file of the Inspector of Police, Usilampatti Town Police Station against her brother and other family members of his wife, pursuant to which, as a counter blast, a case was lodged against the appellant's family members and the said complaint lodged by his wife was subsequently closed as false. In the meanwhile, the appellant came to know that a male child was born to his wife on 26.02.2009 and he was not allowed to see the child. Thereafter, the appellant had filed H.M.O.P.No.362 of 2008 for divorce under Section 13(1) (i-a) of the Hindu Marriage Act.

4. The respondent/wife filed a detailed counter by denying all the allegations made in the petition filed by the appellant and further pleaded that the respondent / wife was always ready and willing to live together with the appellant.

5. Before the Trial Court, the appellant examined himself as P.W.1 and also examined P.Ws.2 & 3 and the documents were marked on his side as Exs.P1 to P15. The respondent examined herself as R.W.1 and marked 2 documents on her side as Exs.R1 and R2.

6. The learned III Additional Subordinate Judge, Madurai, considering the pleadings put forth on either side, oral and documentary evidence and submissions of the learned counsel for the parties, held that the appellant has not proved the allegation of mental cruelty and dismissed the H.M.O.P.No.362 of 2008 filed by him. Aggrieved against the said judgment and decree, the appellant herein filed a First Appeal in H.M.C.M.A.No.5 of 2011 before the learned VI Additional District Judge, Madurai. The learned VI Additional District Judge, Madurai by a judgment and decree dated 01.10.2013 in H.M.C.M.A.No.5 of 2011 confirmed the judgment and decree of the learned III Additional Sub-Judge, Madurai. Aggrieved



against the same, the present Civil Miscellaneous Second Appeal has been filed by the appellant / husband.

7. The following substantial questions of law had been elicited by the learned counsel appearing for the appellant:-

a) Whether the Courts below are correct in rejecting the petition for divorce filed by the appellant under Section 13(1)(1A) of Hindu Marriage Act, when it is clearly established that the respondent herein launched false criminal case against the appellant herein and his family and caused mental cruelty and the same is proved through Ex.P5, Ex.P9, Ex.P14 and Ex.P15 thus the judgment and decree of the Courts below overlooking the material evidence on record needs interference by this Hon'ble Court?

b) Whether the Courts below are correct in rejecting the petition for divorce filed by the appellant herein when he clearly established the fact that the respondent herein voluntarily deserted the appellant without any valid reasons and caused mental cruelty to the appellant herein and hence, the judgment and decree passed by the Courts below warrants interference by this Hon'ble Court?

c) Whether the Courts below are correct in rejecting the documentary evidence filed by the appellant herein to establish the criminal case on false allegation launched by the respondent which is a prima facie document to prove mental cruelty and thus the judgment and decree passed by the Courts below warrants interference by this Hon'ble Court?

8. The learned counsel for the appellant referred various averments in the petition, counter statement filed by the respondent and the grounds of appeal.

9. The appellant has raised three substantial questions of law in the grounds of appeal and in regard to the same, the entire submissions were made by the counsel for the appellant in respect of voluntary desertion by the respondent and about the mental cruelty caused by the respondent to the appellant by filing false complaint.

10. The learned counsel for the appellant submitted that mental cruelty is not defined under the Act and there is no strait-jacket definition for the same. The Hon'ble Apex court as well as this Court in catena of judgments have held that each case must be considered and decided based on its own facts and circumstances of the case to conclude whether the incidents alleged by the party



amounts to mental cruelty or not? In the present case, the appellant has averred various incidents, by which, the respondent has repeatedly caused mental agony and cruelty to the appellant. The learned counsel for the appellant stated that the marriage was solemnized on 28.05.2007 and from 11.09.2008 onwards the appellant and the respondent are living separately for more than 9 years and the marriage has been broken irretrievably. The Hon'ble Apex Court and this Court in a number of judgments has chosen to grant divorce on the ground that the parties have been living separately for years together and there is no chance for reunion. This case is similar to the cases dealt by the Hon'ble Apex Court and this Court and therefore, the marriage can be dissolved on this ground also.

11. In support of his submissions, the learned counsel for the appellant relied on the following judgments:

(i) **2002 (2) SCC 296** (G.V.N.Kameswara Rao Vs. G.Jabilli), wherein in paragraphs 16 and 17, it has been held as follows:

"16. The case of the appellant that he had been subjected to cruelty by the wife is not put as such solely on the basis of one or two incidents. Their marriage life started in 1979 with so many ups and downs. Both of them did not live together for a longer period as happily married couple. The appellant has succeeded in proving that the attitude of the respondent was not cordial and cooperative. The respondent also alleged that their marriage life was not happy and cheerful. The way in which the appellant was treated by the respondent when he visited her sister's house at Araku Valley and the subsequent filing of the criminal complaint whereby the appellant was subjected to severe humiliation would go to show that the respondent was not prepared to extend any kind of cooperation to the appellant. The respondent's allegation that she was physically assaulted by the appellant and his mother is not very convincing. The fact that there was a bleeding injury on her hand was taken note of seriously by the High Court but the question is, in those circumstances, would an ordinary prudent person rush to the police station and file a complaint to see that her husband and his mother be kept in police custody for unduly long hours. These incidents throw an insight into her past conduct when she was staying with the appellant. The mental cruelty faced by the appellant is to be assessed having regard to his status in his life, educational background, the environment in which he lived. The appellant could have suffered traumatic experience because of the police complaint and the consequent loss of reputation and prestige in the society. Married life of the



appellant with the respondent had never been happy. The appellant would say that from 1985 onwards, he has not been having conjugal relationship with the respondent and even prior thereto the respondent was not properly discharging her marital obligations.

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17. The High Court has held in the impugned judgment that the appellant himself was responsible for many of the unhappy incidents and therefore, he shall not be allowed to take advantage of his own fault and the decree for dissolution of marriage shall be denied to him in view of Section 23(1)(a) of the Hindu Marriage Act. We do not think that the High Court was justified in holding this view. The decision was based on the fact that the appellant had executed a power of attorney in favour of his brother-in-law, Rama Rao, authorizing him to take steps for seeking divorce in the year 1982. The appellant admitted having executed that power of attorney. According to the appellant, the respondent, after she came to India in 1982, refused to come back to United States even after much persuasion and under those circumstances, he executed the power of attorney, but later on came to know that power of attorney holder could not file an application. That would only show that right from 1982, the relationship between the appellant and the respondent was not good and the parties thought of divorce. But the appellant did not file any application in 1982. As regards the incident relating to police complaint also, in his statement the appellant had admitted that the respondent had a scratch injury. But there is nothing in the evidence to show that either the appellant or his mother caused any serious injury to the respondent.

(ii) **2012 (7) SCC 288** (Vishwanath Agrawal -Vs- Sarla Vishwanath Agrawal), wherein in paragraphs 22, 28, 34 and 38, it has been held as follows:

"22. The expression 'cruelty' has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.

28. In Praveen Mehta v. Inderjit Mehta[7], it has been held that mental cruelty is a state of mind and feeling with one of the spouses due to behaviour or behavioural pattern by the other. Mental cruelty cannot be established by direct evidence and it is



necessarily a matter of inference to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment, and frustration in one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. The facts and circumstances are to be assessed emerging from the evidence on record and thereafter, a fair inference has to be drawn whether the petitioner in the divorce petition has been subjected to mental cruelty due to the conduct of the other.

34. Keeping in view the aforesaid enunciation of law pertaining to mental cruelty, it is to be scrutinized whether in the case at hand, there has been real mental cruelty or not, but, a significant one, the said scrutiny can only be done if the findings are perverse, unreasonable, against the material record or based on non-consideration of relevant materials. We may note here that the High Court has, in a singular line, declined to interfere with the judgment and decree of the courts below stating that they are based on concurrent findings of fact. The plea of perversity of approach though raised was not adverted to.

38. Having stated the law relating to mental cruelty and the dictum of this Court in respect of the jurisdiction of the High Court where concurrent findings of fact are assailed, as advised at present, we will scan the evidence whether the High Court has failed to exercise the jurisdiction conferred on it despite the plea of perversity being raised. Any finding which is not supported by evidence or inferences is drawn in a stretched and unacceptable manner can be said to be perverse. This Court in exercise of power under Article 136 of the Constitution can interfere with concurrent findings of fact, if the conclusions recorded by the High Court are manifestly perverse and unsupported by the evidence on record. It has been so held in *Alamelu and another v. State, Represented by Inspector of Police*[18] and *Heinz India Pvt. Ltd. & Anr. v. State of U.P. & Ors.*[19] .

12. Per contra, the learned counsel for the respondent submitted that (i) the various allegations made by the appellant against the respondent have not been substantiated and proved; (ii) the contention of the learned counsel for the appellant that the marriage had been broken down irretrievably and therefore, the



appellant is entitled to divorce, is not correct; (iii) Even today, the respondent wants to live with the appellant and lead a happy married life.

WEB COPY 13. The learned counsel for the appellant submitted that the appellant and the respondent were living together as husband and wife only for one year and there is no possibility for them to live as husband and wife and all the efforts taken by the elders of both sides have ended in vain due to the aforesaid facts of the case. The long separation also coupled with the attitude of respondent would amount to mental cruelty caused to the appellant. In order to support his arguments the learned counsel for the appellant relied on judgment of the Hon'ble Supreme Court reported in **(2007) 4 SCC 511** (Samar Ghosh -Vs- Jaya Ghosh), and placed much reliance on para 101 which reads as under:

"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, discomfit 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.

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(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 sterilization 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."

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14. With regard to desertion, the Hon'ble Division Bench of this court reported in **CDJ 2017 MHC 6040** wherein in para 15 and 16 it held as follows:

"15. Further it is to be seen that the parties have been living separately for more than 10 years. On a perusal of the records and deposition of the appellant as well as the respondent coupled with the fact that the marriage between the appellant and the respondent took place on 03/04/2007 dispute arose between them within three months of marriage, M.C.no.58 /2009 was filed on the file of the Judicial Magistrate, Erode on 8. 10.2009 and during the pendency of the M.C.No. 58 /2009 and thereafter, steps had been taken by the respondent/husband to join to her in matrimonial home filed and that the appellant had filed H.M.O.P.No. 72 of 2010 on the file of the ii additional Sub -Judge, Erode under section 9 of the Hindu Marriage Act, for restitution of conjugal rights on 09/03/2010 and the same was ordered on 13/12/2010 and H.M.O.P.No. 224 of 2014 for divorce was filed on 25/07/2013, after six-years of marriage and after completion of trial of the Family Court has granted divorce on 14/11/2016 and the appeal has been filed on 02/01/2017 and till today the parties are living separately. The parties have been litigating for more than 10 years. In respect of cruelty that husband had let in evidence that he was elected in treated and the is also admitted case of the wife that there was dispute between them within three months from the date of my marriage. Hence we find that there is no possibility for reunion between the appellant and the respondent due to the long period of separation and the matrimonial bond has broken beyond repair as evidenced and thus killing upon the judgement of Samar Ghosh, the family court had held that the husband had made out a case for divorce and had allowed the petition granting divorce dissolving the marriage between the appellant and the respondent dated 30/04/2007.

16. Further the family court has also held that in spite of several efforts taken by the respondent/respondent for reunion and orders being passed by the family court allowing the petition for restitution of conjugal rights, the appellant/wife had refused to join with him. The respondents last husband had also approached the police by giving a petition to the police to give effect of the said order wherein the police had advised the appellant/wife to



join the respondents last husband and even then appellant/wife had not joined the respondents last husband and thereby allowed the petition on the ground of desertion too."

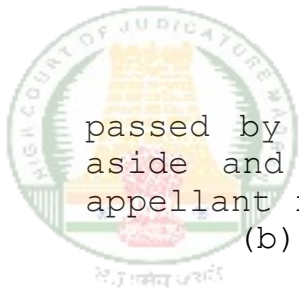
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15.I have carefully considered the submissions made by the learned counsel for the appellant and learned counsel for the respondent and on perusal of the records and the present state of mind of the parties as the dispute involved is between the parties to the marriage, I allow this appeal for the following reasons:-

- (a) As rightly pointed out by the counsel for the appellant the term "Mental Cruelty" does not have a proper shape and it differs from case to case and the same has to be put on consideration individually. Hence when the same is being done and taken for consideration in the present case, the respondent and the appellant are living separately for the past 9 years. Moreover if the respondent had been willing to live with the appellant as submitted by her, she would have taken strenuous efforts for reunion instead of litigating before the court for long years. The factual aspects are supported by the judgments relied on by the counsel appearing for the appellant and the dictums laid down have considerable force for allowing this appeal.
- (b) Likewise the appellant and the respondent are living separately for the past 9 years. Hence it can easily be arrived and concluded that they are not ready and willing to bury their past and live happily as husband and wife. For the said reason this court feels that the marriage between the appellant and the respondent has irretrievably got broken and there is no chance of reunion between the parties.
- (c) A perusal of the records would reveal that the respondent / wife has not even filed any petition for restitution of conjugal rights and also not filed any petition for maintenance and thus, it can be inferred that the respondent/wife is not interested to bury her past so as to live with the appellant.
- (d) The respondent/wife has given false criminal complaint against the appellant/husband which is proved through Ex.P5, Ex.P9, Ex.P14 and Ex.P15 which amounts to mental cruelty.

16.In the result:

(a) this Civil Miscellaneous Second Appeal is allowed. The judgment and decree in H.M.C.M.A.No.5 of 2011 dated 01.10.2013 passed by the learned VI Additional District Judge, Madurai, confirming the order in H.M.O.P.No.362 of 2008 dated 30.04.2011



passed by the learned III Additional Sub Judge, Madurai, are set aside and the petition in H.M.O.P.No.362 of 2008 filed by the appellant for divorce, is allowed;

(b) There shall be no order as to costs .

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Sd/
Assistant Registrar(CS-I)

Sub Assistant Registrar (CS-IV)

To

1.The VI Additional District Judge,
Madurai.

2.The III Additional Sub Judge,
Madurai.

+1cc to Mr.BABU RAJENDRAN, Advocate, SR.No. 76750

+1cc to Mr.D.NALLATHAMBI, Advocate, SR.No. 76875

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02.08.2018

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