



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.06.2018

CORAM

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

CMSA (MD) No.34 of 2014

WEB COPY

A.R.Subramanian

.. Appellant/ Appellant/Petitioner

-Vs-

Amutha

.. Respondent/Respondent/Respondent

Prayer: This Appeal filed under Section 28 of Hindu Marriage Act r/w. Section 100 of C.P.C., against the Judgment and Decreetal Order passed by the learned District Judge, Sivagangai dated 26.03.2014 made in H.M.C.M.A.No.8 of 2010, confirming the Judgment and Decreetal order made in H.M.O.P.No.1 of 2010 dated 03.08.2010 passed by the learned Subordinate Judge, Devakottai.

For Appellant

: Mr.D.Ramesh Kumar

For Respondent

: Mr.S.Srinivasaraghavan

ORDER

This Civil Miscellaneous Second Appeal arises out of the Judgment and Decreetal Order dated 26.03.2014 in H.M.C.M.A.No 8 of 2010, passed by the learned District Judge, Sivagangai, confirming the Judgment and Decreetal Order dated 03.08.2010 in H.M.O.P.No.1 of 2010 passed by the learned Subordinate Judge, Devakottai.

2.The appeal was heard on the following substantial questions of law:-

"a) Whether the Courts below is not correct in dismissing the petition filed by the appellant, when it was admitted by both the appellant and respondent were living separately from the year of 2003, is permissible as per Section 13(1) (1A) (ii) and 13(1-b) of the Hindu Marriage Act,1955?

b) Whether the Courts below is not correct in dismissing the appellant's claim divorce on the ground of cruelty and not on the ground of desertion is permissible under section 13(1) (1b) of Hindu Marriage Act, 1955?"

3.The brief facts, necessary for disposal of the appeal are as follows:

The Appellant is the husband and the Respondent is the wife. The marriage between them was solemnized on 30.06.2002. The Appellant/husband was working as a software Engineer in the State



of Punjab. After the marriage the appellant took the respondent to Chandigarh and she got employment in a company at Chandigarh as an Engineer. Both of them lived for few months and on account of that the respondent got conceived and went to her parental home for delivering the child. On 09.07.2003 the respondent gave birth to a female child. The appellant went and see the child. When the appellant called back the respondent, the respondent refused to live with him. Therefore, the appellant issued a legal notice for reunion to the respondent under Ex-P1 dated 29.12.2003. The respondent/wife gave a reply with false allegations under Ex-P2 dated 31.12.2003. The Appellant/husband filed a petition seeking Restitution of Conjugal Rights in H.M.O.P.No.9 of 2004 on 16.01.2004. In the meantime, Panchayat was held to patch up the gap between the couple and the same was failed. During the pendency of the above petition it was averred that the respondent/wife agreed to live with the appellant and came to his residence and lived with him on 28.06.2004. Thereafter they lived together at Bengaluru and the respondent/wife treated the appellant/husband with cruelty. Subsequently the H.M.O.P.No.9 of 2004 was dismissed for default. Once again the respondent/wife left the matrimonial home without informing the petitioner and went to her parental home. It is averred that because of the mental cruelty inflicted by the respondent/wife, the appellant/husband's father died. The respondent/ wife without any valid reasons had deserted the appellant/husband and the same caused mental cruelty to the appellant/husband. Therefore the Appellant/husband filed the H.M.O.P. No.1 of 2010 seeking divorce on the ground of cruelty.

4.The respondent/wife resisted the petition by filing counter statement attributing fault on the part of her husband and stated that only her husband had not chosen to take her back to the matrimonial house. The respondent/wife had prayed for counter claim of restitution of conjugal rights in the counter statement filed before the trial court and she expressed her interest of reunion in her counter statement before the trial Court.

5.In order to prove their respective case, the appellant/husband got himself examined as P.W1 and 12 documents were marked as Exs.P1 to P12. The respondent/wife was examined as RW.1 and no documents were marked on her side. The Trial court after evaluation of entire evidence adduced by both parties dismissed the divorce petition filed by the Appellant/husband on the ground that the husband has failed to prove that the conduct of the respondent/wife had inflicted mental cruelty. On appeal, in H.M.C.M.A.No.8 of 2010, the Lower Appellate court has given a finding that the appellant/husband has not proved the case of mental cruelty and dismissed the Appeal. The lower Appellate court <https://hccs.csls.gov.in/jsp/serve/> an observation that the Appellant/husband must prove that the respondent/wife had voluntarily left the matrimonial home without any reason.



6.I heard Mr.D.Ramesh Kumar, learned counsel appearing for the appellant and Mr.S.Srinivasaraghavan, learned counsel for the respondent and perused the entire materials available on record.

7.The contention of the learned counsel for the appellant is that the Lower Appellate Court did not consider the allegation of cruelty levelled by the Husband on proper factual matrix and legal perspective. One such contention is that the conduct of the wife in foisting false case against the husband amounts to mental cruelty. The learned counsel for the Appellant would further submit that the female child was born on 09.07.2003. Prior to the birth of the child the respondent/wife had left the matrimonial home and till now she did not turn up to lead the matrimonial life and despite several steps taken by the appellant/husband she was adamant and not interested in the re-union, which amounts to cruelty. It is the further contention of the appellant/husband that desertion on the part of the wife is also amounts to cruelty both mentally as well as physically. Though a relief of restitution of conjugal rights was prayed as a counter claim, both the courts below have ignored the same and there was no whisper about the counter claim in the judgments. The Learned counsel further contended that if at all the Respondent/Wife was interested in rejoining her husband, she would have made attempts to persuade the relief of restitution of conjugal rights before the courts below or else she would have filed a separate proceedings seeking restitution of conjugal rights. Since the respondent/wife had not taken any steps for reunion, it clearly proves that she was not interested in continuing the marital relationship with her husband. The learned counsel would further submit that the marriage between the appellant and respondent has irretrievably broken down since both of them are living separately for more than 18 years. Hence he prays for allowing the appeal.

8.The learned counsel for Respondent/wife has contended that both the courts below have properly appreciated the oral and documentary evidence adduced on either side and rightly rejected the claim of the Appellant/husband seeking divorce. The learned counsel further contended that since there was no cruelty on the part of the wife, the appellant/ husband was not able to prove the same. Normal wear and tear situations of married life and trivial irritations would not be adequate ground for granting divorce. The learned counsel further contended that since burden of proof lies heavily on the Appellant/husband, he failed to substantiate the same during the trial and therefore the courts below rightly rejected the petition seeking divorce. Therefore, the learned counsel contended that there is no necessity arose for this Court to interfere with the concurrent findings of the Trial court as well as the Lower Appellate Court and he prays dismissal of this



9. Now the point for determination arises in the appeal is:

"Whether the Appellant/husband is entitled to get the decree of divorce on the ground of cruelty under Section 13 (1)(ia) of Hindu Marriage Act, 1955 and whether the marriage has irretrievably broken down?"

10. The learned counsel for the Appellant mainly contended that the conduct of the wife in deserting him and foisting false case against him amounts to mental cruelty. The learned counsel for Appellant relied upon the following decisions in support of his contention:

- 1) 2006-2-LW 606 (Naveen Kohli Vs Neelu Kohli)
- 2) (2007)4 SCC 511 (Samar Ghosh Vs Jaya Ghosh)
- 3) 2012-5-LW-309 (K. Ayyanar Vs P. Muniyammal)
- 4) 2014-3-LW-577 (Arunkumar Jain @ Bunt Vs Geeta)
- 5) 2015-1-LW-775 (Malathi Ravi Vs B.V. Ravi)

11. The Hon'ble Supreme Court, in the case of Samar Ghosh vs. Jaya Ghosh, reported in (2007) 4 SCC 511, has laid down some of the instances which could be considered as mental cruelty. It is specifically mentioned in the judgment itself that the law is not exhaustive of, what mental cruelty is and what is not mental cruelty, which is 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.

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 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."

12. This Court in Arunkumar Jain @ Bunt Vs Geeta (cited supra), has held as follows:-

<https://hcservices.ecourts.gov.in/hcservices/> is well settled 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. From the facts narrated above including the subsequent events, it is established and an inference can legitimately be drawn that the treatment of the respondent/wife is such that it causes an apprehension in the mind of the appellant about her mental welfare and the same would certainly amount to mental cruelty.

19. The criminal court disbelieved the dowry theory as put forth on behalf of the respondent/wife. As such there would have been some chance of reunion between the couple, as the matter stood as on the date of filing of the petition for divorce, but because of the respondent/wife's acts subsequent to the filing of the appeal, the rift in the matrimonial relationship between the husband and the wife got widened abysmally in addition to getting snowballed to such an extent that each on projecting oneself before the court that they could not see eye to eye on any issue and they tried to cut the ground under the feet of each other.

20. In the light of the above, we are of the considered view that the appellant/Husband has established the ground of cruelty and thereby he is entitled to the decree of divorce against the respondent/wife.

21. As regards desertion, it is contended by the learned counsel for the appellant that the respondent/wife had left the matrimonial home for the past nine years and she never turned back. This court in a decision reported in "Ms.P.Manimekalaik Versus R.Kothandaraman 2010-4-LW485=(2010) & MLJ 417", has considered the issue of desertion in para 31 which is extracted hereunder:

"31 "Desertion" for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words, it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things,. Desertion, therefore means withdrawal from the matrimonial obligations i.e, not permitting or allowing and facilitating cohabitation between the parties. Desertion is not a single act



complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. The party seeking divorce on the ground of desertion is required to show that he or she was not taking the advantage of his or her own wrong. (vide Savithri pandey Vs Prem chandra Pandey (2002) 2 SCC 73)."

22. This court has also relied upon the decisions of the Hon'ble Supreme Court, wherein, it has been specifically observed that the wife was forced to live because of ill-treatment, it cannot amount to desertion. In this case, the respondent/wife had been living separately for more than nine years. So, the factum of separation is proved and it is to be noted that she had not taken any steps in considered manner to resolve the disputes and to join her husband in order to live together. Therefore, we are of the view that the appellant/ husband has also established the ground of desertion, based on which, decree of divorce can be granted."

13. In K. Ayyanar case cited supra, this Hon'ble court has held that lodging false complaints with false allegations against the husband would amount to mental cruelty, the relevant portion is as follows:

"21....Certainly the allegations regarding dowry and illegitimate intimacy (which are admitted to have been falsely made) would amount to mental cruelty. Once the baseless and false allegations are made, that torment the feeling of love and affection between the couple, which make the bonding impossible. Time and again, the Hon'ble Supreme Court has held that filing of cases with false allegations against the husband itself would amount to mental cruelty. Therefore, it is clear that the wife is guilty of cruelty."

14. In Dr. (Mrs). Malathi Ravi vs Dr. B.V. Ravi, cited supra, the Hon'ble Supreme Court has held that launching criminal prosecution against husband with false allegations amounts to mental cruelty. In Naveen Kohli vs. Neelu Kohli case, cited supra, the Hon'ble Supreme court has held as follows:-

"89. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage. Public interest and interest

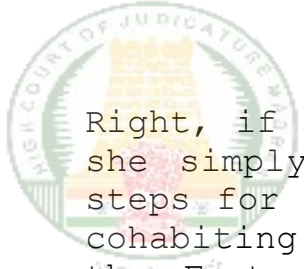


of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond."

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15.The Hon'ble Supreme Court in more than one decision has held that lodging false complaint against husband itself amount to mental cruelty. Now let me analyze the case on hand on the basis of the above decisions. The foremost contention of the appellant/husband is that the respondent/wife lodged a false criminal complaint against him and the same amounts to cruelty. The respondent in her cross examination has admitted that she lodged a criminal complaint under Ex-P7 against her husband and other in-laws accusing dowry harassment. On perusal of the evidence it is seen that, pursuant to the criminal complaint the husband and others have obtained Anticipatory bail in order to prevent arrest from the police. However, the respondent/wife had abruptly left the criminal complaint and she had not proceeded further with the complaint. If at all she was really harassed by the husband she would have taken proper recourse under criminal law against her husband and others. But very strangely she had left the complaint without any progress and there is no proper explanation from the respondent/wife in her evidence. It seems that the respondent/wife had not bothered about this criminal complaint. This conduct of the respondent/wife would go to show that the said complaint is nothing but a false one. Therefore this court infers that the respondent/wife has lodged the criminal complaint only to harass her husband and the same amounts to mental cruelty. This aspect has not been considered by the Trial court as well as the First Appellate Court.

16.The second contention of the appellant/husband is that the wife had never shown any interest for reunion and on the other hand all the efforts taken by the husband for reunion were a futile exercise. The conduct of the wife would clearly amount to cruelty since she had withdrew the matrimonial ties without any reasonable cause. According to the appellant/husband, desertion also amounts to mental cruelty. Though the respondent/wife prayed for a counter claim ie., seeking the relief of restitution of conjugal rights, the Trial court as well as the Lower Appellate court has not rendered any finding on that aspect. It is necessary to analyze the conduct of the respondent/wife. The wife who examined herself as RW1 in her cross examination has admitted that she insisted her husband to return back the house hold articles, which were given as marriage Stridhana and she has also received the same from her husband. Though in the pleadings of the respondent/wife, there was a counterclaim for restitution of conjugal rights, the same was not persuaded her. There was no explanation from the wife's side as to why she had not instituted separate proceedings seeking the relief of Restitution of Conjugal



Right, if she really interested in rejoining with her husband. But she simply admitted in her evidence that she had not taken any steps for reunion. It really shows that she was not interested in cohabiting with her husband. The Factum of desertion as well as the Factum of Animus Deserendi is proved in the present case. There was no proper explanation from the respondent/wife that she had a reasonable cause to stay away from her husband. In the absence of such reasonable cause, the wife is guilty of desertion.

17. There is no straight jacket formula to apply for mental cruelty. Each case depends on its own facts and must be judged on these facts. Simply because the husband has not stated the particulars of the criminal case in his petition, the admitted position cannot be thrown away. The Trial court and Lower appellate court have completely overlooked the settled law laid down by this Hon'ble Court as well as the Hon'ble Supreme court in catena of decisions, that lodging false complaint amounts to Mental cruelty. In the instant case, the respondent/wife has admitted in her evidence that she lodged a criminal complaint and she had not proceeded with the complaint further. This clear and candid admission is well enough to hold that the complaint was false and the same has been lodged to threaten her husband and in laws. It is also the case of the Appellant/ husband that due to this conduct of his wife, his father was expired. This statement cannot be ignored merely for want of evidence when it is clearly established that the complaint itself was a false complaint.

18. It is an admitted fact that both the appellant and the respondent are living separately for the past 15 years. The Hon'ble Supreme Court in Samar Ghosh Vs Jaya Ghosh, reported in 2007 4 SCC 511 has laid down certain illustrative examples wherefrom inference of mental cruelty can be drawn. The case on hand squarely fell under those instances laid down by the Hon'ble Supreme Court. The Supreme Court in the said case has held as follows:

"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."

19. In the light of the above principle and various decisions cited supra, this court has no hesitation to hold that the Appellant/husband is entitled to decree of divorce on the ground of cruelty.

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20. In the result, the appeal is allowed and the Judgment and decreetal order in H.M.C.M.A.No.8 of 2010, passed by the learned



District Judge, Sivagangai, confirming the Judgment and Decreetal order dated 03.08.2010 in H.M.O.P.No.1 of 2010 are hereby set aside and in the result the marriage solemnized between the petitioner and the respondent herein dated 30.06.2002 is dissolved. No costs.

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Sub Assistant Registrar(CS-II)

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1. The District Judge,
Sivagangai.
2. The Subordinate Judge,
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VB/PN/SAR2/30.07.2018/10P/7C

order made in
CMSA (MD) No.34 of 2014
08.06.2018