



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.07.2018
DELIVERED ON : 24.10.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.M.S.A. (MD) No.26 of 2013
and
CMP (MD) No.6158 of 2018

K.Gangatharan

... Appellant/Appellant/Petitioner

vs

Sornasundari

... Respondent/Respondent/Respondent

Prayer: Appeal filed under Section 28 of the Hindu Marriage Act read with Section 100 of C.P.C. against the judgment and decree dated 31.08.2012 in H.M.C.M.A.No.6 of 2004 on the file of the District Judge, Sivagangai, confirming the judgment and decree passed in H.M.O.P.No.60 of 2002, dated 03.03.2004 on the file of the Subordinate Judge, Devakottai.

For Appellant : Ms.P.Malini

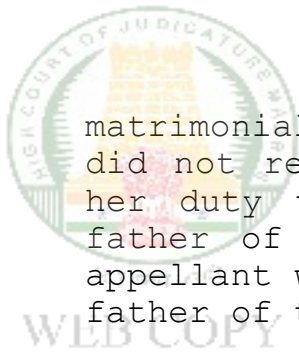
For Respondent : Smt.S.Sujatha
(Legal Aid counsel)

JUDGMENT

This Civil Miscellaneous Second Appeal has been filed by the appellant under Section 28 of the Hindu Marriage Act, 1955 read with Section 100 of Code of Civil Procedure, 1908 against the judgment dated 31.8.2012 in H.M. C.M.A.No.6 of 2004 on the file of the District Judge, Sivagangai, confirming the judgment passed in H.M.O.P.No.60 of 2002, dated 03.3.2004 on the file of the Subordinate Judge, Devakottai.

2. The appellant herein is the husband and he had filed H.M.O.P.No.60 of 2002 under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 for divorce.

3. Briefly stated that the case of the appellant is that the marriage between the appellant and the respondent was solemnized on 26.10.2001 and after the marriage, they lived in joint family in the



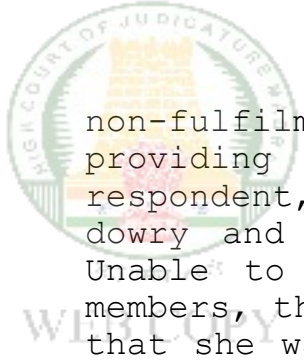
matrimonial home. Within few days of the marriage, the respondent did not respect the parents of the appellant and she had not done her duty to her husband. In the absence of the appellant, the father of the respondent took her to his home and whenever, the appellant went to his father-in-law house to take back his wife, the father of the respondent ill-treated, abused and threatened him.

4. According to the appellant, the respondent demanded the appellant to lead a separate life and accepting the request, they took a rented house separately and led their separate life. Even during the period of separate life, the respondent had not cooked properly and unnecessarily quarrelled with the appellant. Without knowledge of the appellant, the respondent went to her parents home and in fact, she had aborted pregnancy without the knowledge of the appellant. The respondent often quarrelled with the appellant and went to her parents house. On 30.12.2001, the father of the appellant and a mediator by name Solai went to the house of the respondent for mediation and at that time, the respondent did not respect them and ill-treated them.

5. According to the appellant, on 20.5.2002, the respondent quarrelled with the appellant and again left the matrimonial home by saying that she was not willing to lead life with the appellant. Thereafter, she had not returned back to her matrimonial home. On 1.7.2002, the appellant issued a lawyer notice to the respondent for restitution of conjugal rights and the respondent failed to receive the said notice. Even after the lawyer notice, the respondent did not return back to the matrimonial home for leading the family life. According to the appellant, because of the respondent's activities, the appellant suffered a lot by mind. Hence, the appellant has filed the petition for divorce.

6. Refuting the averments in the petition, the respondent filed counter stating that it is absolutely false to state that she had not respected the parents of the appellant and refused to do her duty as wife. It is stated that at the time of marriage, her father gave 5 sovereigns of golden chain to the appellant and 35 sovereigns of gold jewels to her and a cash of Rs.20,000/- was also given to the appellant as dowry, apart from sridhana articles worth Rs.50,000/-. It is also stated that the respondent and her father ever disrespected the appellant and his family members and also never threatened them.

7. According to the respondent, when the respondent was living with her husband in the joint family, the parents and the sister of the appellant and also the appellant demanded dowry of motor cycle, fridge and air-cooler. They have also demanded Rs.1,00,000/- cash for the improvement of the business. They threatened her by saying that if she had not fulfilled the demand, she would have been deserted by the appellant. In the meanwhile, the respondent conceived pregnancy and the same was informed to the appellant and his parents. Even after knowing the pregnancy, due to



non-fulfilment of the dowry, they subjected her to cruelty by not providing food and other facilities to her. According to the respondent, in the year 2002, the appellant and his parents demanded dowry and assaulted her and deserted from the matrimonial home. Unable to tolerate the torture of the appellant and his family members, the respondent came to her father's house. It is stated that she was under the impression that the appellant would come to the parents house of the respondent and take back her matrimonial home for leading the family life. By suppressing the material facts, the appellant has filed the petition and prayed for dismissal of the same.

8. Before the trial Court, on the side of the appellant, P.Ws.1 and 2 were examined and Exs.P1 to P6 were marked. On the side of the respondent, R.W.1 was examined and no document was marked.

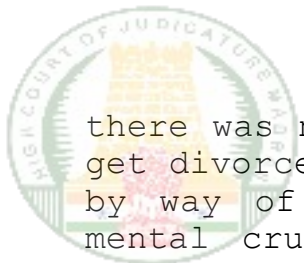
9. Upon consideration of the oral and documentary evidence, the trial Court dismissed the petition for divorce filed by the appellant. Aggrieved by the same, the appellant preferred H.M.C.M.A.No.6 of 2004.

10. By the judgment dated 31.08.2012, the first appellate Court dismissed the appeal preferred by the appellant holding that the appellant has failed to prove the cruelty made against him and his parents. Aggrieved by the dismissal of the appeal, the appellant has preferred this Civil Miscellaneous Second Appeal.

11. I heard Ms.P.Malini, learned counsel for the appellant. Despite service of notice, the respondent had not entered appearance. By an order dated 19.04.2018, this Court appointed Smt.Sujatha, learned counsel as Legal Aid Counsel and she appeared and argued the case on behalf of the respondent. I perused the entire records.

12. In the present appeal, the appellant had raised the following substantial questions of law:

- (i) Whether the failure on the part of the appellate Court to take note of the acquittal of criminal case launched by the respondent against the appellant and his family members resulted in arrest and putting in jail renders its finding unsustainable or not?
- (ii) Whether the trial Court believed the accusation of demanding dowry and ill-treatment and harassment and driven out of matrimonial home on non-fulfilment of the same based on the circumstance of filing of charge sheet is unsustainable in law or not?
- (iii) Whether the false and baseless accusation of demanding dowry and ill-treatment and driven out of matrimonial home on non-fulfillment of same



there was no chance for reunion were all entitling the appellant to get divorce from the respondent. In fact, the appellant has proved by way of cogent evidence for getting divorce on the ground of mental cruelty caused by the respondent. Finally, the learned counsel submitted that the concurrent findings of the Courts below are unsustainable and the same is liable to be set aside. To fortify her submission, the learned counsel relied upon the following decisions:

(i) Samar Ghosh v. Jaya Ghosh, reported in I (2007) DMC 597 (SC).

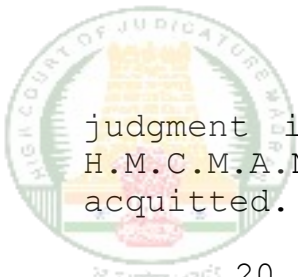
(ii) R. Frederick v. H. Malini, reported in (2018) 1 MLJ 325.

16. It is an admitted fact that the marriage between the appellant and the respondent was solemnized on 26.10.2001 and initially, they lived in the joint family and after that, the appellant and the respondent led separate life in a separate rented house.

17. The allegation of the appellant is that the respondent refused to do her duty as wife and even though, the appellant was with his wife in a rented house, he led his bachelor life. Further, allegation of the appellant is that the respondent filed a false dowry harassment petition against the appellant and his family members. Based on the complaint, they were arrested and detained in jail. The case was taken on file as C.C.No.26 of 2002 and after full fledged trial, by the judgment dated 22.10.2008, the appellant and his family members were acquitted of the offence under Section 498A IPC and Section 4 of the Dowry Prohibition Act.

18. On a perusal of the judgment dated 22.10.2008 in C.C.No.26 of 2002 on the file of the District Munsif-cum-Judicial Magistrate Court, Karaikudi, it is seen that the learned Magistrate recorded the finding that in her evidence P.W.1 (respondent herein) admitted that at the time of marriage, the appellant has not demanded any dowry and after six months of the marriage also, the appellant has not demanded fridge, motorcycle and air-cooler as alleged. Thus, the learned Magistrate held that from the evidence of PW.1, the prosecution has failed to prove its case and therefore, acquitted the accused persons.

19. However, the first appellate Court, in its judgment observed that the the respondent had filed the petition for dowry harassment against the appellant and his family members after filing of the divorce application. The case against them under the dowry harassment was pending and not disposed of. Therefore, we cannot say that the allegation made against the appellant and his parents with regard to the dowry harassment was not true. It would be decided only after trial. The aforesaid finding of the appellate Court factually incorrect on the ground that in the said criminal case under Section 498A IPC and Section 4 of Dowry Prohibition Act, the accused were acquitted on 22.10.2008 itself. So on the date of



judgment in the appeal before the District Judge, Sivagangai in H.M.C.M.A.No.6 of 2004, the appellant and his parents were acquitted.

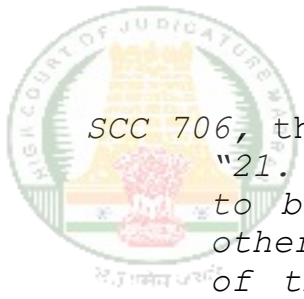
20. Cruelty has not been defined in the Act but various pronouncements of the Apex Court and other High Courts have outlined the scope of the term 'cruelty'. Cruelty is evident where one spouse treats the other and manifests such feelings towards him or her as to cause reasonable apprehension that it will be harmful or injurious to live with the other spouse. Cruelty may be physical or mental. Whether a spouse is inflicted with physical cruelty or not, it can be judged on the basis of direct evidence whereas mental cruelty is to be inferred on analyzing the factual matrix of each case and drawing conclusion thereon.

21. Cruelty for the purpose of Section 13(1)(i-a) of the Hindu Marriage Act is to be taken as a behaviour by one spouse towards the other which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. According to the appellant, filing of false complaint against the appellant and his family members has really caused mental cruelty not only to the appellant, but also to the family members of the appellant.

22. In *V.Bhagat v. D.Bhagat*, reported in (1994) 1 SCC 337, the Hon'ble Supreme Court examined the concept of "mental cruelty" and observed as under:

"16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be

23. In *Parveen Mehta v. Inderjit Mehta*, reported in (2002) 5



SCC 706, the Hon'ble Supreme Court held:

"21. Cruelty for the purpose of Section 13(1) (i-a) is to be taken as a behaviour by one spouse towards the other, which causes reasonable apprehension in the mind of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behaviour or behavioural pattern by the other. Unlike the case of physical cruelty, mental cruelty is difficult to establish by direct evidence. 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 inference has to be drawn from the attending facts and circumstances taken cumulatively. In case of mental cruelty it will not be a correct approach to take an instance of misbehaviour in isolation and then post the question whether such behaviour is sufficient by itself to cause mental cruelty. The approach should be to take the cumulative effect of the facts and circumstances of emerging from the evidence on record and then draw a fair inference whether the petitioner in the divorce petition has been subjected to mental cruelty due to conduct of the other."

24. According to the appellant, the respondent left the matrimonial home and lived with her parents house and she has not returned back the matrimonial home. To prove that the appellant has taken steps to live with the respondent, he had filed Ex.P4 notice dated 1.7.2002, wherein the appellant has called upon the respondent to come and lead happy matrimonial life. According to the appellant, the respondent had failed to receive the said notice. Since the respondent had failed to come and join with the appellant, he had filed petition for divorce.

25. However, the first appellate Court held that the appellant and the respondent lived separately for about eight years and that there was no reason for reunion. It was on the part of the appellant to take steps for the reunion. The mistake was on the part of the appellant and he has not taken any steps for the reunion. The aforesaid finding of the first appellate Court is unsustainable on the ground that nothing prevented the respondent from taking steps for reunion. Admittedly, in the case on hand, the respondent has not taken steps for reunion, nor she had shown her readiness and willingness to live with the appellant. On the other hand, the respondent has prosecuted the appellant and his family members by lodging a false complaint. The aforesaid act of the respondent, admittedly, would cause mental cruelty to the appellant.



26. In *K.Srinivas v. K.Sunita*, reported in (2014) 16 SCC 34, Hon'ble Supreme Court held that "filing of false criminal complaint constitutes matrimonial cruelty".

27. In *Samar Ghosh v. Jaya Ghosh*, supra, the Hon'ble Supreme Court, enumerated some instances of human behaviour which may be relevant in dealing with the cases of "mental cruelty". While enumerating instances, the Hon'ble Supreme Court observed that instances are only illustrative and not exhaustive.

28. The learned counsel for the appellant would submit that on the ground of long separation and of irretrievable breakdown of marriage, the appellant is entitled to get divorce. In support, the learned counsel relied upon the decisions in *Geeta Jagdish Mangtani v. Jagdish Mangtani*, reported in II (2005) DMC 492 (SC) and *Narendra v. K.Meena*, reported in (2016) 9 SCC 455.

29. In *Geeta Jagdish Mangtani v. Jagdish Mangtani*, supra, the Hon'ble Supreme Court held:

"5. The marriage survived only for a brief period of about seven months. After 2nd June, 1993 till the exchange of notices and replies during September to December, 1996 and filing of the divorce petition ultimately by the husband on 31st December, 1996, there has been no attempt on the part of the wife to stay with the husband. She is a school teacher and it is common knowledge that in schools there are long vacations during summer months, more so, in Government schools where the wife teaches. At least during those holidays she could have visited the husband at Ulhasnagar along with her son and stayed with him. There is nothing on record to show that any such attempt was ever made by her to visit the husband during this entire period. She has stated in her evidence that the husband used to come and stay with her during her vacations. This has been denied by the husband. Therefore, the conclusion is inevitable, that there was never any attempt on the part of the wife to go to husband's house i.e., matrimonial home of the parties after she left on 2nd June, 1993. From this fact alone animus deserendi on the part of the wife is clearly established. She has chosen to adopt a course of conduct which proves desertion on her part. In the facts and circumstances of the case, it cannot be said that this desertion on the part of the wife was with a reasonable cause. Such a course of conduct over a long period indicates total abandonment of marriage and cannot be justified on ground of monetary consideration alone as a reasonable cause to desert. It also amounts to wilful neglect of the husband by the wife."



30. In *Narendra v. K.Meena*, supra, the Hon'ble Supreme Court held as under:

"18. Applying the said ratio to the facts of this case, we are inclined to hold that the unsubstantiated allegations levelled by the respondent wife and the threats and attempt to commit suicide by her amounted to mental cruelty and therefore, the marriage deserves to be dissolved by a decree of divorce on the ground stated in Section 13(1) (i-a) of the Act."

31. Admittedly, in the case on hand, based on the false complaint, the appellant and his family members were prosecuted which caused mental cruelty to the appellant and his family members. In *Geeta Jagdish Mangtani v. Jagdish Mangtani and Narendra v. K.Meena*, supra, though divorce was sought under Section 13 (1) (i-a), the facts and circumstances of the case is entirely different and those two cases are distinguishable.

32. In the case on hand, spouses were living separately for the past fourteen years and the respondent wife has not taken any steps for reunion. Therefore, the conduct of the respondent over a long period would show that she is not interested in the matrimonial life.

33. In *R.Frederick v. H.Malini*, a Division Bench of this Court held as under:

"24. In the present case, admittedly, the Appellant and the Respondent are residing separately for the past 19 years. The long separation between them would render the matrimonial life slipping to a stage beyond retrieval. The matrimonial life between the Appellant and the Respondent has irretrievably broken leaving little or no scope, practically, for re-union of the couple, at this stage. Thus, no useful purpose could be achieved by keeping the matrimonial tie alive when practically there is no possibility or chance for the couple to get re-union. Therefore, in the best interest of the Appellant and the Respondent, it is desirable that the matrimonial relationship between them has to be snapped leaving the parties to decide their future course of living in the manner they wish."

34. In *Sukhendu Das v. Rita Mukherjee*, reported in (2017) 9 SCC 632, the Hon'ble Supreme Court held as under:

"This Court, in a series of judgments, has exercised its inherent powers under Article 142 of the Constitution for dissolution of a marriage where the Court finds that the marriage is totally unworkable, emotionally dead, beyond salvage and has broken down irretrievably, even if the facts of the case do not provide a ground in law



on which the divorce could be granted (*Manish Goel v. Rahini Goel*, (2010) 4 SCC 393). Admittedly, the appellant and the respondent have been living separately for more than 17 years and it will not be possible for the parties to live together and there is no purpose in compelling the parties to live together in matrimony (*Rishikesh Sharma v. Saroj Sharma*, (2007) 2 SCC 263). The daughter of the appellant and the respondent is aged about 24 years and her custody is not in issue before us. In the peculiar facts of this case and in order to do complete justice between the parties, we allow the appeal in exercise of our power under Article 142 of the Constitution."

35. In *Rishikesh Sharma v. Saroj Sharma*, reported in (2007) 2 SCC 263, the Hon'ble Supreme Court held:

"4. ... In the instant case the marriage is irretrievably broken down with no possibility of the parties living together again. Both the parties have crossed 49 years and living separately and working independently since 1981. There being a history of litigation with the respondent wife repeatedly filing criminal cases against the appellant which could not be substantiated as found by the courts. This apart, only child born in the wedlock in 1975 has already been given in marriage. Under such circumstances, the High Court was not justified in refusing to exercise its jurisdiction in favour of the appellant. This apart, the wife also has made certain allegations against her husband, that the husband had already remarried and is living with another lady as stated by her in the written statement. The High Court also has not considered the allegations made by the respondent which have been repeatedly made and repeatedly found baseless by the courts.

5. In our opinion it will not be possible for the parties to live together and therefore, there is no purpose in compelling both the parties to live together. Therefore, the best course in our opinion is to dissolve the marriage by passing a decree of divorce so that the parties who are litigating since 1981 and have lost valuable part of life can live peacefully for remaining part of their life.

6. During the last hearing both the husband and wife were present in the Court. The husband was ready and willing to pay a lump sum amount by way of permanent alimony to the wife. The wife was not willing to accept the lump sum amount but however expressed her willingness to live with her husband. We are of the



opinion that he desire to live with her husband at this stage and at this distance of time is not genuine. Therefore, we are not accepting this suggestion made by the wife and reject the same."

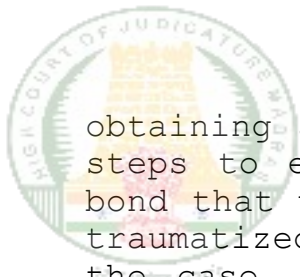
36. In the case on hand, admittedly, the parties have crossed 48 and 38 years respectively and were living separately. One male child born from the wedlock. No valid explanation for the respondent's failure to return to the matrimonial home is forthcoming. In fact, the appellant contends that behaviour of the respondent caused genuine/reasonable apprehension in the mind of the appellant that it is not quite safe to continue the relationship of marriage with the respondent. Therefore, the appellant is entitled to maintain divorce petition under Section 13(1)(i-a) of the said Act.

37. 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. (Ref: *Samar Ghosh v. Jaya Ghosh*, supra)

38. It is admitted that the respondent left the matrimonial home on her own accord. It has been established that thereafter, the appellant has taken steps to get back the respondent to the home, but the respondent refused to return back the matrimonial home. In this case, nothing on record to show that such an attempt was made by the respondent.

39. The matrimonial duties and responsibilities in particular are of varying degrees from house to house or person to person. When a spouse makes complaint about the treatment of cruelty by the partner in life, the Court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. The Judges and lawyers, should not import their own notions of life and may not go in parallel with them. When we deal with the conduct of human beings, who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of.

40. In an unreported judgment in *C.M.A. (MD) Nos.238 and 239 of 2012 (Salome v. Dr.Prince D.Immanuel)*, this Court held that where the appellant/wife and the respondent/husband were living separately for more than 10 years and the attitude of the respondent even after



obtaining a decree of restitution of conjugal rights has not taken steps to enforce the same, but insisting on retaining matrimonial bond that would amount to causing mental cruelty and to torment and traumatized the appellant. In the given facts and circumstances of the case, in *Salome v. Dr.Princice D.Immanuel*, supra, the learned Single Judge of this Court held:

"20. ... The insistence of the respondent to continue the matrimonial tie even though he is fully aware that there is no possibility of re-union and living together as husband and wife, amounts to causing mental cruelty to the appellant."

41. Thus, the Courts below failed appreciate the evidence adduced on either side and came to a wrong conclusion that the mistake is on the part of the appellant and he had failed to establish the cruelty made against him and his family members. As stated supra, the appellant suffered mental cruelty on the sole ground of lodging of false complaint by the respondent and he is entitled to get divorce from the respondent.

42. In the present case, as stated supra, the respondent left the matrimonial home in the year 2001 and she had not returned back to the matrimonial home. Since there was no possibility of re-union, directing the appellant and the respondent to live together as husband and wife would in fact make the matrimonial life a hell for both parties.

43. In *K.Srinivas Rao v. D.A.Deepa*, reported in 2013 (2) SCALE 735, the Hon'ble Supreme Court held as under:

"We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree."

44. The ratio of law which emerged from catena of decisions of the Hon'ble Supreme Court is that where there is evidence that the husband and wife indulged in mutual bickering leading to remonstrations and therefrom to the stage where they target each other, the insistence by one to retain the matrimonial bond would be a relevant factor to decide on the issue of cruelty, for the reason the obvious intention of said spouse would be to continue



with the marriage not to enjoy the bliss thereof but to torment and traumatized each other.

45. Apart from proving the lodging of the false complaint against the appellant which caused mental cruelty, the long separation coupled with the attitude of respondent would also amount to mental cruelty caused to the appellant. Nearly 17 years have elapsed since the spouses parted company. In these circumstances, it can be reasonably inferred that the marriage between the parties has broken down irretrievably.

46. In *Sandhya Rani v. Kalyanram Narayanan*, reported in 1994 Supp (2) SCC 588, the Hon'ble Supreme Court held:

"since the parties are living separately for the last more than three years, we have no doubt in our minds that the marriage between the parties has irretrievably broken down. There is no chance whatsoever of their coming together. Therefore, the Court granted the decree of divorce."

47. Admittedly, both the parties have not pleaded scope for settlement between them before the Courts below. Since there was no possibility of reconciliation, an inference has to be drawn that the marriage between the appellant and the respondent has broken down irretrievably with a view to restore good relationship and to put a quietus to the litigation between the parties and not to leave any room for future litigation so that they may live peacefully thereafter.

48. In *Naveen Kohli v. Neelu Kohli*, reported in (2006) 4 SCC 558, the Hon'ble Supreme Court observed as under:

"85. Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality."

86. 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 appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is ~~only in the 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."

49. The aforesaid decision would squarely be applicable to the facts of the present case. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Thus, the Courts below erred in dismissing the petition for divorce filed by the appellant since the appellant and the respondent were living separately for long number of years.

50. The above said view of this Court is fortified by a larger Bench decision of the Hon'ble Supreme Court in *Samar Ghosh*, supra, wherein qua long separation, it has been emphatically held as under:

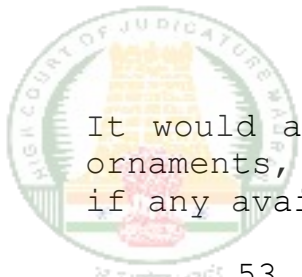
"95. Once the parties have separated and the separation has continued for a sufficient length of time and one of them has presented a petition for divorce, it can well be presumed that the marriage has broken down. The court, no doubt, should seriously make an endeavour to reconcile the parties; yet, if it is found that the breakdown is irreparable, then divorce should not be withheld. The consequences of preservation in law of the unworkable marriage which has long ceased to be effective are bound to be a source of greater misery for the parties."

(emphasis supplied)

In the case on hand, as held above, the marriage is irretrievably broken and there has been a long separation of seventeen years.

51. Looking into the peculiar facts and circumstances of the case, I am of the opinion that it will not be possible for the parties to live together and therefore, there is no purpose in compelling both the parties to live together. Therefore, the best course is to dissolve the marriage by passing a decree of divorce. The parties who are litigating since 2002 and have lost valuable part of life can live peacefully for remaining part of their life.

52. In *Naveen Kohli v. Neelu Kohli*, supra, while granting divorce to the appellant therein, the Hon'ble Supreme Court has considered permanent maintenance to be paid to the wife. In the case on hand, considering avocation of the appellant and the fact that the parties who stayed together only for a few months and also the fact that one male child was born from the wedlock, it would be appropriate to order permanent alimony to the respondent. Thus, a lump sum amount of Rs.5,00,000/- is directed to be given by the appellant to the respondent towards permanent alimony towards the respondent and the male child, if the child with the respondent.



It would also appropriate to direct the appellant to return golden ornaments, silver and other articles, belonging to the respondent, if any available with the appellant.

53. In the result, the Civil Miscellaneous Second Appeal is allowed and the judgment and decree dated 31.08.2012 passed in H.M.C.M.A.No.6 of 2004 on the file of the learned District Judge, Sivagangai, confirming the order dated 03.03.2004 passed in H.M.O.P.No.60 of 2002 on the file of the learned Sub-Court, Devakottai is set aside. H.M.O.P.No.60 of 2002 filed by the appellant is allowed and the marriage between the appellant and respondent solemnized on 26.10.2001 stands dissolved. The appellant is directed to pay a sum of Rs.5,00,000/- to the respondent as permanent alimony and her male child, if the child is with the respondent. The appellant is also directed to return golden ornaments, silver and other articles, belonging to the respondent, if any available with the appellant. No costs. Consequently, connected miscellaneous petition is closed.

The Legal Aid authorities attached to this High Court is directed to pay a sum of Rs.5,000/- to the Legal Aid Advocate Smt.S.Sujatha.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The District Judge, Sivagangai.
2. The Subordinate Judge, Devakottai.

Copy To:-

1. The Chief Co-ordinator,
Legal Aid Committee,
Madurai Bench of Madras High Court,
Madurai.
2. The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO M/s.P.MALINI, ADVOCATE IN SR No. 91763

VS

TE/BK/SAR-1 : 17/12/2018 : 15P/7C

order made in
C.M.S.A.(MD) No.26 of 2013 and
CMP (MD) No.6158 of 2018
24.10.2018