



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.06.2018

DELIVERED ON: 27.11.2018

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

C.M.S.A. (MD) No.27 of 2017

S.Kumaresh

.. Appellant/Respondent/Petitioner

**vs**

P.Vennila

.. Respondent/Appellant/Respondent

**Prayer:** Civil Miscellaneous Second Appeal filed against the order dated 7.4.2016 made in HMCMA No.4 of 2014 on the file of the VI Additional District Judge, Madurai, dismissing the order dated 17.3.2014 in H.M.O.P.No.77 of 2006 on the file of the III Additional Sub Judge, Madurai.

For Appellant : Mrs.Thenmozhi Sivaperumal  
for M/s.B.Asha  
For Respondent : Mr.V.Sakthivel

**JUDGMENT**

This civil miscellaneous second appeal is filed as against the order dated 7.4.2016 made in HMCMA No.4 of 2014 on the file of the learned VI Additional District Judge, Madurai, dismissing the order dated 17.3.2014 in H.M.O.P.No.77 of 2006 on the file of the learned III Additional Sub Judge, Madurai.

2. Succinctly put, the facts are as under: The appellant is the husband and the respondent is the wife. The marriage between the appellant husband and the respondent wife took place on 12.9.2003 and right from the beginning, the appellant claims that the respondent had ill-treated him and did not show any inclination to lead a peaceful matrimonial life. From the wedlock a child was born on 30.3.2005 and after that the respondent wife did not return to the matrimonial home with the child.

3. It is stated that under such circumstances, the appellant husband filed a divorce petition in H.M.O.P.No.77 of 2006 before the learned III Additional Sub Judge, Madurai, who, by order dated 17.3.2014, allowed the petition and granted divorce. Assailing the said order, the respondent wife preferred an appeal, being H.M.CMA.No.4 of 2014, which was allowed by the learned VI Additional District Judge, Madurai, by judgment dated 7.4.2016.



4. Calling in question the said judgment dated 7.4.2016, the appellant /husband has filed this appeal.

5. The learned counsel appearing on behalf of the appellant/ husband vehemently contended that the respondent wife has been filing complaints one after another as against the appellant and his family members and in response to a complaint lodged on 25.4.2006 before the All Women Police Station, Pudukottai, for the offences under Section 498A and 506(ii) of the Indian Penal Code, the appellant was remanded for 19 days, which by itself is a sufficient ground for grant of divorce on account of cruelty and, therefore, the lower Appellate Court ought not to have interfered with the divorce granted by the trial Court.

6. Per contra, the learned counsel appearing on behalf of the respondent/ wife reiterated the reasons that weighed with the lower Appellate Court in setting aside the order of divorce granted by the trial Court and prayed for dismissal of the present appeal.

7. I heard Mrs.Thenmozhi Sivaperumal, learned counsel for the petitioner and Mr.V.Sakthivel, learned counsel for the respondent and perused the documents available on record.

8. In the case on hand, it is beyond any cavil that the respondent wife lodged a complaint before All Women Police Station, Pudukottai in Crime No.6 of 2006 under Section 498-A of the Indian Penal Code and the learned Judicial Magistrate, Pudukottai, vide judgment dated 14.8.2009 in C.C.No.114 of 2006, acquitted the appellant/ husband of the charges levelled against him by the respondent/ wife.

9. At this juncture, it is apposite to refer to a decision of the Hon'ble Supreme Court in *K.Srinivas v. K.Sunita*, (2014) 16 SCC 34, wherein, the Hon'ble Supreme Court emphatically held that filing of a false criminal complaint, after filing of the divorce petition, and subsequent non establishing of the allegation raised in the criminal proceedings, by itself, will amount to be cruelty, entitling a dissolution of marriage. The relevant paragraph of the said decision is quoted hereunder:

*"5. The Respondent-Wife has admitted in her cross-examination that she did not mention all the incidents on which her Complaint is predicated, in her statement under Section 161 of the Cr.P.C. It is not her case that she had actually narrated all these facts to the Investigating Officer, but that he had neglected to mention them. This, it seems to us, is clearly indicative of the fact that the criminal complaint was a contrived afterthought. We affirm the view of the High Court that the criminal complaint was "ill advised". Adding thereto is the factor that the High Court had been informed of the acquittal of the Appellant-Husband and members of his family. In these circumstances, the*



High Court ought to have concluded that the Respondent-Wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the Appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 13(1)(i-a) of the Hindu Marriage Act."

10. In the case on hand, the petition for divorce was filed by the appellant/husband on 3.4.2006 and the police complaint was given by the respondent/wife on 25.4.2006 and FIR was registered on 29.4.2006. These facts categorically establish that the criminal complaint was a contrived afterthought. Moreover, the appellant/husband has been acquitted of the charges levelled against him by the learned Judicial Magistrate, Pudukottai, vide judgment dated 14.8.2009 passed in C.C.No.114 of 2006.

11. This Court is unable to understand as to why such cases are advised to be filed from the side of the wife, after divorce is sought for by the husband, if not to trouble the husband. Wife should understand that once her husband, pursuant to the allegations made by her, is taken into custody, whatever little chance of reconciliation there may be, is totally destroyed. All the decisions relied on by the learned counsel for the respondent pertain to cases delivered prior to the authoritative pronouncement of the Hon'ble Supreme Court in *K.Srinivas, supra*. The decision in *K.Srinivas, supra*, is squarely applicable to the case on hand.

12. In the case on hand, it is the specific case of the appellant/ husband that since the birth of child in the year 2005, the respondent/ wife had not chosen to come back to the matrimonial house. Nothing to the prove the contra has been placed on record by the respondent/ wife. So for almost 13 years, the parties are living separately.

13. 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."

14. 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."

15. Looking at the overall conspectus of the matter, more particularly the mental cruelty to which the appellant has been subjected to by filing of criminal 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 2006 have lost valuable part of their life and can live peacefully for remaining part of their life.

16. For the foregoing reasons, the appeal is allowed and the order dated 7.4.2016 made in HMCMA No.4 of 2014 by the learned VI Additional District Judge, Madurai, is set aside and the order dated 17.3.2014 in H.M.O.P.No.77 of 2006 passed by the learned III Additional Sub Judge, Madurai, is confirmed. No costs.

Sd/-

Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

**To**

1. The VI Additional District Judge, Madurai.
2. The III Additional Subordinate Judge, Madurai.

+ 1 CC TO Mr.V.SAKTHIVEL, ADVOCATE IN SR No. 97403

VSV

TE/BK/SAR-4 : 28/12/2018 : 4P/4C