



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.11.2019

CORAM

THE HONOURABLE MS.JUSTICE P.T.ASHA

C.M.S.A (MD)No.14 of 2009

WEB COPY

Sureshkannan

... Appellant/ Appellant/Petitioner

Vs.

B.Manickam

... Respondent/Respondent/Respondent

PRAYER:- This Civil Miscellaneous Second Appeal filed under Section 13 (1) (1a) r/w Section 100 of Civil Procedure Code, against the judgment and decree passed in HMCMA No.6 of 2008 dated 30.09.2008 on the file of the Additional District Court (Fast Track Court), Virudhunagar, confirming the judgment and decree passed in HMOP No.17 of 2007 dated 12.03.2008 on the file of the Subordinate Court, Virudhunagar.

For Appellant : Mr.V..Manikandan

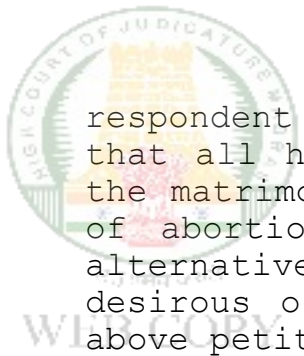
For Respondent : Mr.L.Shaji Chellan

ORDER

The husband is the appellant before this Court. This Civil Miscellaneous Second Appeal arises against the orders of the Courts below dismissing the application filed by the husband seeking divorce from the respondent/wife on the ground of cruelty.

2.The facts in brief which are narrated by the husband for seeking divorce from the wife, are as follows:-

The marriage between him and the respondent had been solemnized on 15.11.2002 as per the Hindu rites and customs at Virudhunagar. The categorical case of the husband is that no dowry had been given at the time of marriage and that after the marriage, they lived together in the quarters that has been provided by the Armed Reserve Police. The husband would come forward with the contention that since he was dark complexioned, the wife was not very happy and he was subject to humiliation at the hands of the wife on account of his colour. The respondent/wife would often state that he was not the husband of her dreams. The petitioner/husband had further submitted that the wife is constantly demanding money from him and would threaten that she would file a complaint against him and his father, incase money was not given to her and she would ensure that he would loss his employment and therefore, the husband succumbed to the threat and was forced to give money to the wife. He would further submit that when he met with an accident on 26.05.2005 and had been taking treatment as inpatient till 18.06.2005, the

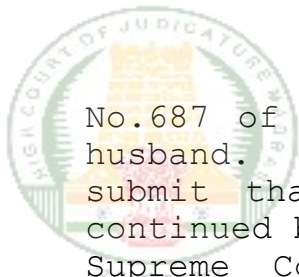


respondent had never extended any helping hand to him. He said that all his attempts to reunite with the respondent who had left the matrimonial home after she had lost the second child on account of abortion, had turned futile. Therefore, left with no other alternative and taking into account the fact that the wife was not desirous of continuing her matrimonial life with the husband, the above petition seeking for divorce has been filed.

3. On 10.08.2007, the wife had filed a counter refuting all the statements and contending that at the time of marriage, she had been given 40 sovereigns of gold. Apart from the household articles worth about Rs.1,50,000/-, the parents of the wife had also given a sum of Rs.50,000/- for meeting out the marriage expenses. The respondent/wife would further submit that after the birth of her daughter on 30.08.2003, the respondent started demanding additional dowry and would assault her on many occasions. In view of the torture that has been inflicted by the husband on the wife, her father had settled his immovable property in favour of the husband. When the respondent was pregnant for second time, the husband had assaulted her which constrained her to give a complaint to the superior officer of the husband. When they had mooted a compromise, the husband had agreed to take back the wife. Once again, she had rejoined him and the husband renewed harassing her demanding more dowry and once again she had lodged a complaint and on 15.02.2007 an enquiry was conducted. She would further contend that when the respondent was hospitalized, it was only she who was taking care of him and a sum over Rs.30,000/- was spent by her on the husband. Since the husband was not giving any maintenance, she was constrained to file a petition for maintenance in M.C.No.7 of 2007 and thereafter, the petition in Cr.M.P.No.1045 of 2007 under the Women's Protection Act. The wife would submit that the present petition has been filed only to enable the husband to remarry.

4. The learned Subordinate Judge, Virudhunagar, before whom the petition for divorce in H.M.O.P.No.17 of 2007 was filed, had dismissed the same after considering the evidence on record. Aggrieved by the said order, the husband had filed H.M.C.M.A.No.6 of 2008 on the file of the Additional District Court (Fast Track Court), Virudhunagar. The learned Additional District Judge had confirmed the order passed by the learned Subordinate Judge, Virudhunagar. Challenging the concurrent orders, the husband is before this Court.

5. Heard Mr.V.Manikandan, learned counsel appearing for the appellant who would submit that the wife had subjected the appellant to great deal of mental agony and harassment by filing criminal case. He would further submit that the domestic violence case which has been filed in Cr.M.P.No.1045 of 2007, was dismissed on the ground that the wife had not proved the allegation. He would further submit that subsequently, the complaint was lodged by the



No.687 of 2010 and the same has also been ended in favour of the husband. He has been acquitted from the said case. He would submit that pending the divorce petition, the cruelty has been continued by the wife. He would rely on the judgment of the Hon'ble Supreme Court reported in **(2002) 2 SCC 296** in the case of **G.V.N.Kameswara Rao Vs. G.Jabilli** and the judgment of this Court reported in **2014 (3) MWN (Civil) 671** in the case of **K.Srinivas Vs. K.Sunita** in support of his contention that lodging a false police complaint was also a ground of cruelty, since the person concerned lost his reputation in society. He would also rely upon the following judgment in support of his argument that since the petitioner and the respondent are living separately for several years, it would be sufficient to grant a divorce:-

(i) The judgment of the Hon'ble Supreme Court reported in **1995 (2) SCC 7** in the case of **Ramesh Chander Vs. Savitri**.

(ii) The judgment of this Court reported in **(2008) 5 MLJ 1153** in the case of **Maheswari Vs. M.Manoharan**.

6.The husband has come forward with the petition for divorce on the ground that the wife was subjecting him to great deal of cruelty and harassment a) on account of his dark complexion and not being upto the expectation of the wife b) that she required money and in case of the husband failing to give her the same he would be threatened with dire consequences c) that the wife had not taken care of him when he was hospitalized on account of accident.

7.These allegations had been countered by the wife stating that she has begotten two children through the husband which would disprove the contention of the husband that the wife was not happy with the looks of the husband. She would further contend that during the time when he was recuperating after the accident, the respondent/wife is taking care of him not only physically, but also by giving sufficient money. As regards the allegation that the wife was demanding money, the respondent/wife would contend that it was the husband who was demanding money and that the petitioner/husband would assault her if the demand was not met and on two occasions she was forced to approach the superior of the husband to bring about an amicable settlement. That apart, on account of harassment that has been meted out to her, her father had to settle the immovable property in the name of the husband. Both the Courts below have found the respondent's contention to be true and they have also relied upon the admission of the husband during his cross-examination to hold that the respondent has come forward with the false case. I do not find any grounds to interfere with these concurrent orders of the Courts below.



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8. In the result, this Civil Miscellaneous Second Appeal stands dismissed as the same does not involve any question of law. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar (CS)

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To

1. The Additional District Judge (Fast Track Court),
Virudhunagar.

2. The Subordinate Judge, Virudhunagar.

Copy to: The Section Officer,
VR Section, (2 Copies),
Madurai Bench of Madras High court, Madurai

+1 CC to Mr.V.MANIKANDAN, Advocate (SR-98367[F] dated 14/11/2019)
+1 CC to Mr.L.SHAJI CHELLAN, Advocate (SR-99083[F] dated
18/11/2019)

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MK (17.12.2019) 4P 7C