



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2019

CORAM

THE HON'BLE MR.JUSTICE **S.S.SUNDAR**

C.M.S.A. (MD) No. 34 of 2019

WEB COPY

T.Kavitha : Appellant/Respondent/ Respondent/Wife
.. Vs ..

T.Thiruselvan : Respondent/Appellant/Petitioner/Husband

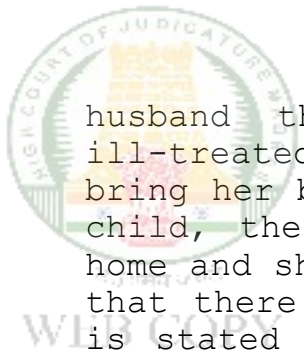
PRAYER: Civil Miscellaneous Second Appeal is filed under Section 28 of Hindu Marriage Act r/w Section 100 of Civil Procedure Code, praying to set aside the fair and decreetal order dated 13.03.2019 passed in C.M.A.No.14 of 2015 on the file of the Additional District and Sessions Judge (Fast Track Court), Kanyakumari at Nagercoil reversing the fair and decreetal order dated 23.03.2015 passed in H.M.O.P.No.80 of 2012 on the file of the first Additional Sub Court, Nagercoil and allow this Civil Miscellaneous Second Appeal with cost.

For Petitioner : Mr.M.Ramu
For Respondent : Mr.N.Dilip Kumar
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JUDGMENT

The wife is the appellant in this Civil Miscellaneous Second Appeal . The respondent husband filed a petition for divorce on the ground of cruelty in H.M.O.P.No.80 of 2012 on the file of the First Additional Subordinate Court, Nagercoil. Though the petition was dismissed, on appeal by the respondent/husband before the Additional District and Sessions Court (Fast Track Court), Kanyakumari at Nagercoil in C.M.A.No.14 of 2015, the judgment of learned First Additional Sub Judge was reversed and a decree for divorce was granted. Aggrieved by the same, the wife has preferred the above Civil Miscellaneous Second Appeal.

2.The marriage between the appellant and the respondent was solemnised on 20.01.2011 as per the Hindu Rites and Customs in a place at Kanyakumari District. From the pleadings, it is admitted that both are working. Out of the wedlock, a male child was born on 28.09.2011. In the petition for divorce, the respondent has referred to few instances of cruelty. It is the case of the respondent that the appellant hated his parents and used to make bad comments about them that they are ugly and she did not like them. Apart from the usual quarrel and the appellant's conduct in going to her parents' house very often, it is the specific case of the

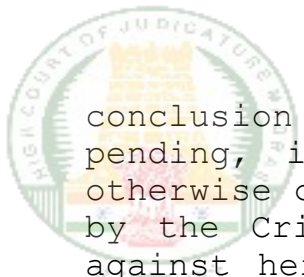


husband that the appellant used to abuse him with vulgar words and ill-treated him whenever he went to the appellant's parents house to bring her back. The case of the husband is that after the birth of child, the appellant refused to live with him in the matrimonial home and she was calling through phone demanding divorce. He stated that there was no consummation after the first child was born. It is stated that while they were living together the appellant/wife pressed him to purchase a land to construct a separate house for their living and offered her jewels. However, it is stated by the husband that the wife was compelling him to return her jewels and abused him with bad words. Apart from pleading several instances to show the wife's attitude towards him, the respondent/husband referred to the message sent by the appellant to him through her cellphone which reads as follows:

"சூடு சொரணை இருந்தால் என் திங்ஸ் எல்லாம்
எடுத்து வெளில போடு உன் அப்பா அம்மாவைக் கு வாங்கி கொடுக்க
என்னுடைய திங்ஸ் பயன்படுத்தினால் பிச்சைக்கு அர்த்தம்."
"எல்லா திங்ஸ் ம் அபேஸ் பண்ணிரலாமுனு நினைச்சியோ உன்
அப்பன் வீட்டு சொத்தா மரியாதையா என் நகை பணம் திங்ஸ்
எல்லாம் தந்துரு அலந்து நிக் காத."

3.The message gives an impression that the appellant/wife had no intention to live with him and she had sent the message to return all her things and if the husband uses any of her things that would amount to begging. The respondent also alleged that appellant had deserted him after the birth of male child and that the same caused him mental cruelty.

4.The wife filed a counter generally denying all the averments in the petition. In the counter, it is seen that the wife has given the list of jewels which were given to her by her parents by way of dowry. In the counter itself the wife had alleged mental cruelty and harassment as against the respondent. From the nature of allegations made by the husband it would indicate that she had enough grievance against her husband to get divorce from him. She admitted in the counter about the criminal complaint given by her against her husband for commission of offences under Sections 294 (b), 323 and 506 (ii) I.P.C. and Section 4 of TNPHW Act, 2002. The husband examined himself as P.W.1 and marked Ex.A1 to A15. The appellant though examined herself as R.W.1 did not mark any document. After elaborately considering the legal aspects to prove cruelty for the purpose of getting divorce under Section 13(1), (1a) of the Hindu Marriage Act, the lower Court found that the allegations against the wife are not sufficient to grant divorce on the ground of cruelty. The husband relied upon the criminal complaint given by the appellant against the respondent and her conduct in pursuing the school authorities to suspend the respondent by referring to the pendency of the criminal complaint. Though the trial Court accepted the subsequent events, after filing the petitions to grant divorce on the ground of mental cruelty, found that the criminal complaint cannot be the basis to come to the

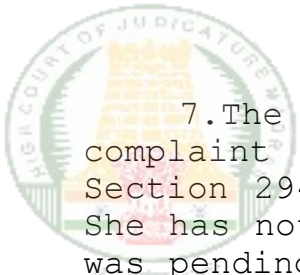


conclusion regarding cruelty. Since the criminal case was then pending, it was observed by the trial Court that the truth or otherwise on the complaint would be gone into only after the verdict by the Criminal Court and that the allegations made by the wife against her husband in the criminal case cannot be regarded as an act of cruelty. The trial Court was then found that the evidence of husband though refers to several instances, could not impress the Court to come to the conclusion that the husband had suffered mental cruelty from the conduct of wife so as to grant divorce. Finally, the learned Subordinate Judge dismissed the petition. Before the appellate Court the respondent husband filed a petition for reception of additional documents in I.A.No.139 of 2018. The appeal in C.M.A.No.14 of 2015 was taken along with I.A.No.139 of 2018 and the appellate Court allowed the appeal and dismissed the petition in I.A.No.139 of 2018 which was filed to permit additional evidence namely the order that was passed in C.C.No.315 of 2014 acquitting the husband from the criminal charges attracting Section 294(b), 323, 506(ii) IPC and Section 4 of TNPHW Act, 2002. The appellate Court has in fact elaborately considered the evidence and the principles to be followed while considering the matrimonial dispute between the husband and wife in a proceedings initiated for divorce. The lower appellate Court though agreed with the appellant that the judgment of criminal Court in C.C.No.315 of 2014 by Judicial Magistrate II, Nagercoil, is not relevant to decide the issue whether the husband has suffered mental cruelty or not found that the attitude of the wife in taking up the complaint to suspend her husband from service during the pendency of criminal complaint was considered as an act of cruelty. After giving cogent reasons, the appeal was allowed by the lower appellate Court and the petition for divorce was also allowed. Aggrieved by the same, the wife has preferred the above Civil Miscellaneous Second Appeal.

5. In the memorandum of grounds, the wife has raised the following substantial questions of law:

- (a) Whether the deemed suspension of the respondent would amount to cruelty?
- (b) Whether the lower appellate Court is correctly appreciated the facts and evidence of the respondent?
- (c) Whether the appellant committed the cruelty as alleged by the respondent?

6. From the admitted facts and evidence, this Court is of the view that the appellant and her husband were never in good terms after the marriage. The appellant has not denied the allegations that there was no consummation after the first child was born. It is also admitted that the husband and wife were living separately and that the respondent was never made an attempt to live with the appellant as she had serious grievance against the husband to have separate residence. As a matter of fact, the allegations made in the counter affidavit would show that she was suffering a lot, as if the husband had harassed her always with cruelty.



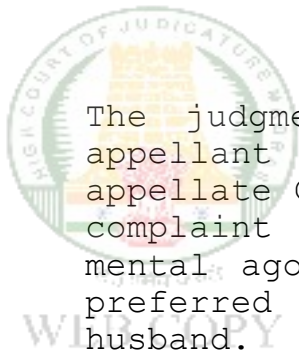
7.The appellant has admitted that she has given the criminal complaint against her husband alleging criminal acts attracting Section 294(b), 323, 506(ii) IPC and Section 4 of TNPHW Act, 2002. She has not stopped by giving mere complaint. When the complainant was pending investigation, it is admitted that the appellant gave a representation to the Headmaster of the school in which the respondent was working. In the complaint, she has stated as follows:

“என்னை அடித்து கொடுமைப்படுத்தியது சம்பந்தமாக எனது கணவர் T.திருச்செல்வன் மற்றும் அவரது பெற்றோர்கள் மீது கோட்டார் காவல் நிலையத்தில் வழக்கு பதிவு செய்யப்பட்டு தற்போது 20.09.2014 அன்று ஜெயிலில் அடைக்கப்பட்டுள்ளார். ஆகவே T.திருச்செல்வன் மீது துறை ரீதியான நடவடிக்கை எடுக்க பணிவோடு வேண்டுகிறேன். இத்துடன் FIR நகல் இணைத்துள்ளேன்.”

8.It is also admitted by the wife that the husband was arrested pursuant to the criminal complaint lodged by the wife. The wife did not stop with complaint. She proceeded further and insisted the school management to take action against her husband for having been arrested pursuant to the criminal complaint given by her against him. It is admitted that the respondent/husband was placed under suspension as he was arrested and was kept under the judicial custody for some time.

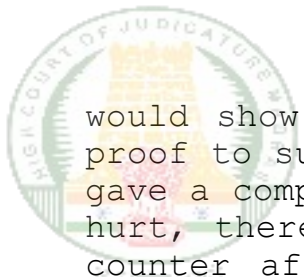
9.The learned Counsel for the respondent, therefore, submitted that the appellant was always treating the husband with cruelty and that she had no love or affection towards her husband at any point of time.

10.The learned Counsel appearing for the appellant, however, relied upon an unreported judgment of the Hon'ble Supreme Court in the case of **Ravinder Kaur v. Manjeet Singh** in C.A.No.2021 of 2010, dated 21.08.2019. It was a case where the wife has given complaint against the husband and his father. When this was cited as one of the reasons for granting divorce, the Hon'ble Supreme Court examined the implications of such complaint being given by the wife against the husband. The Hon'ble Supreme Court after referring to the incident which prompted the wife to give complaint has accepted the case of the wife that the criminal complaint was given to protect her right. Hence, it was observed by the Hon'ble Supreme Court that the police complaint and the proceedings initiated by the wife under Section 107 Cr.P.C. read with Section 151 Cr.P.C. is a natural legal course adopted by the wife to protect her right and possession of the property. It was further held that such action taken by the wife in accordance with law cannot in any event be considered as inflicting cruelty as the legal proceedings was used only as a shield against the assault. In the same judgment, a previous judgment of the Hon'ble Supreme Court in the case of **Ramchander v. Ananta** reported in (2015) 11 SCC 539 was relied upon.



The judgment of the Hon'ble Supreme Court relied upon by the appellant is not helpful to her as this Court and the lower appellate Court has accepted the appellant's case that mere criminal complaint alone cannot be treated as an Act of cruelty causing mental agony to the other spouse. In this case, the wife has preferred a complaint making serious allegations against the husband. Since the truth or otherwise need not be examined at this stage, the complaint as such has no relevance in this context. However, the further representation of the wife to pursue her complaint in other forum with a determination to cause mental hardships to the husband by initiating departmental proceedings against him cannot be ignored. The wife has achieved in pursuing her objective. The respondent was not only arrested but subsequently suspended from service during pendency of criminal complaint. It is in these circumstances, this Court is also inclined to consider the facts in detail. As pointed out earlier, the appellant had more grievance against the respondent and she has specific allegations of harassment and mental cruelty caused by the husband. A wife who is interested in saving the matrimonial life would certainly think thrice before making serious allegations against her husband in a matrimonial proceedings. As a matter of fact, the allegations made by her in the counter would justify her to come to Court to seek divorce on the ground of mental cruelty. The wife has not specifically denied the allegations that she is living separately some time after her child's birth. She did not dispute the message she had given to the husband. From the facts admitted by the wife, the decision of lower appellate Court based on appreciation of evidence cannot be faulted. The admitted incidents would show that the appellant/wife treated her husband with cruelty by making negative comments about the appearance of the husband's parents. Though it is stated in the counter affidavit that the husband was assaulting her always demanding dowry, no independent witness was examined to prove any of the allegations she had made against her husband. The wife who has given the list of jewels which her parents had given to her at the time of marriage did not bother to specifically denying any of the incidents cited by the husband in the petition as acts of cruelty.

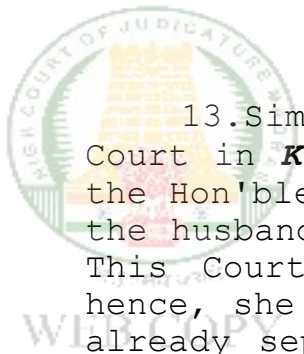
11. The question of law raised by the appellant wife are not appropriate having regard to the admitted facts and evidence available in this case. Regarding the first question of law, the conduct of the appellant/wife in making her further representation to the Headmaster to take disciplinary proceedings against her husband has significance. The appellant/wife may be justified in giving criminal complaint to protect her right and privileges. Though the criminal complaint ended in acquittal, it is not an honourable acquittal, as the husband was acquitted for want of proof to substantiate the criminal acts alleged. However, the wife has made several allegations against the husband which are neither substantiated nor corroborated by any piece of evidence or independent witness. The allegations made in the counter itself



would show that the appellant owes some explanation if she has no proof to substantiate such serious allegations. Though the appellant gave a complaint against the husband for harassment causing grievous hurt, there was no complaint for demanding dowry. However, in the counter affidavit, the appellant would repeatedly allege that the husband was treating her with cruelty demanding money and other articles from her parents on several occasions. Having regard to the conduct and attitude of the wife as against the husband, this Court is unable to take a different view or to interfere with the findings of the lower appellate Court. Except the first question of law, the other questions of law are on facts and this Court is unable to find any substance in any of the substantial questions of law. Hence, considering the fact that the lower Court has taken into account all the circumstances and material evidence, this Court is of the view that the findings of the lower appellate Court are well founded. It is seen that the lower Appellate Court has applied the principles in tune with several precedents and the judgments of lower appellate Court is perfectly in order. The Hon'ble Supreme Court in several cases has held that the conduct of wife levelling serious allegations against husband amounts to cruelty and making such reckless, defamatory and false allegations against husband and his family members would certainly be viewed as an act to lower the husband's reputation.

12. The learned Counsel appearing for the appellant submitted that the wife is entitled to get permanent alimony. Relying upon the judgment of the Hon'ble Supreme Court in the case of **Raj Talreja v. Kavita Talreja** reported in **AIR 2017 SC 2138** wherein it has been held as follows:

"12. Though we have held that the acts of the wife in filing false complaints against the husband amounts to cruelty, we are, however, not oblivious to the requirements of the wife to have a decent house where she can live. Her son and daughter-in-law may not continue to live with her forever. Therefore, some permanent arrangement has to be made for her alimony and residence. Keeping in view the status of the parties, we direct that the husband shall pay to the wife a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) as one time permanent alimony and she will not claim any further amount at any later stage. This amount be paid within three months from today. We further direct that the wife shall continue to live in the house which belongs to the mother of the husband till the husband provides her a flat of similar size in a similar locality. For this purpose, the husband is directed to ensure that a flat of the value up to Rs.1,00,00,000/- (Rupees One Crore Only) be transferred in the name of his wife and till it is provided, she shall continue to live in the house in which she is residing at present."



13. Similarly, in yet another judgment of the Hon'ble Supreme Court in **K.Srinivas Rao v. D.A.Deepa** reported in **AIR 2013 SC 2176**, the Hon'ble Supreme Court while granting decree for divorce directed the husband to pay Rs.15,00,000/- to the wife as permanent alimony. This Court has accepted the wife has caused mental cruelty and hence, she is responsible for the decree for divorce. The wife has already separated from the husband and the appellant has not even denied, specifically the allegations that there was no consummation after the first child was born. The wife in her counter never admitted about her wish or inclination to join the husband to live with him as husband and wife. The wife has gone to the extent of keeping the husband under suspension pursuant to the criminal complaint lodged by her against him. In such circumstances, the wife who has caused heavy financial loss to the husband in the present context is not entitled to any special indulgence. Moreover, the wife is also employed. No evidence is let in to show the financial status. In the course of proceedings, the wife has collected all her jewels and articles from the husband. The husband is liable for maintenance to take care of the child who must be studying in a school now. Hence, liberty is given to the appellant/wife to approach the appropriate forum to seek legal remedy to get maintenance in case no amount is paid by the husband towards the maintenance of their child. This Court is not inclined to pass orders regarding grant of *ex gratia* or permanent alimony to the wife.

14. As a result, this Civil Miscellaneous Second Appeal is dismissed and the judgment and decree of the Additional District and Sessions Court (Fast Track Court), Kanyakumar at Nagercoil in C.M.A.No.14 of 2015 reversing the judgment and decree of learned Additional Subordinate Judge, Nagercoil in H.M.O.P.No.80 of 2012 is affirmed. No costs.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

SRM

To

1. The Additional District and Sessions Judge
(Fast Track Court),
Kanyakumari at Nagercoil.



2. The First Additional Sub Judge,
Nagercoil.

+1CC TO MR.M.RAMU, Advocate Sr. No. 83605

+1CC TO MR.N.DILIP KUMAR, Advocate Sr. No. 83594

C.M.S.A. (MD) No. 34 of 2019

27.08.2019

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