



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.04.2019

PRONOUNCED ON : 05.09.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.S.A(MD) .No.32 of 2018

and

C.M.P. (MD) .No.12507 of 2018

V.Karthikeyan

... Appellant/
Respondent/Petitioner

Vs.

Narmada Nachiar

... Respondent /
Appellant/Respondent

PRAYER:- Appeal filed under Order 43 Rule 1 of C.P.C. r/w Section 100 of C.P.C., against the judgment and decree dated 20.02.2018 passed in H.M.C.M.A.No.07 of 2014 by the Principal District Court, Madurai, reversing the fair and decreetal order dated 30.07.2014 passed in H.M.O.P.No.234 of 2012 by the Subordinate Court, Melur.

For appellant : Mr.K.R.Laxman

For respondent : Mr.P.Ganapathi Subramanian

JUDGMENT

This appeal has been filed by the appellant / husband challenging the judgment passed by the first appellate Court, whereby and whereunder the first appellate Court has set aside the order passed by the trial Court granting divorce to the appellant/husband and dismissed the H.M.O.P.

2. For better appreciation and understanding, the parties are referred to as per their rank in the trial Court.

3. The brief facts of the case of the petitioner / husband are as follows:

The marriage between the petitioner/husband and the respondent/wife was solemnized on 20.08.2004 at Madurai. At the time of marriage, 75 sovereigns of gold jewels and household articles were brought by the respondent. The petitioner offered 15



sovereigns of Thali to the respondent. After marriage, the petitioner and the respondent lived in the joint family of the petitioner. In view of the compulsion of the respondent/wife, they formed a separate house in the ground floor of the petitioner's parents house and they had been residing separately there from 2006 to 2008 as husband and wife. On 06.06.2006, the petitioner and the respondent blessed with a female child. The respondent has not acted as a dutiful wife to the petitioner. The respondent has been suspecting the fidelity of the petitioner. During the year 2009, the respondent compelled the petitioner to get partition of the property and therefore, the petitioner started to live with his parents in the first floor of the house. From 2009 to 2011, the respondent had been living separately in the ground floor of the house of the petitioner's parents. During that period, the respondent gave a complaint to the HDFC Bank, where the petitioner was working as Manager and hence, he lost his job. During November, 2011, the parents of the respondent visited the petitioner, offered to arrange a job and threatened to live separately with the respondent at their house. He refused to do so. The parents of the respondent took the respondent and child to their home. In spite of fervent requests, the respondent did not return to matrimonial home. For the past six months, the respondent has been living separately leaving the petitioner. Hence, the petitioner suffered severe mental agony. There is no chance of reunion. Hence, the petitioner filed the petition for divorce on the ground of cruelty and desertion.

4. The brief facts of the case of the respondent/wife are as follows:

At the time of marriage, 75 sovereigns of gold jewels, household articles worth about Rs.5 lakhs were given to the petitioner. The petitioner did not offer 15 sovereigns of gold jewel to the respondent. On compulsion of the parents of the petitioner, a Scorpio car was purchased by the parents of the respondent and given to the petitioner. On 06.06.2006 they blessed with a female child. It is false to say that due to family dispute, the respondent wanted the petitioner to live separately. The petitioner and his parents were expecting male child and hence, they did not even visit to see the child. Upon mediation by elders, the petitioner took the respondent to the matrimonial home. In the circumstances, the respondent became pregnant for the second time. The petitioner wanted to abort the pregnancy stating that it is a female child. The respondent refused to do so. But, the petitioner strongly kicked on the abdomen of the respondent. The petitioner took the respondent to a private hospital and caused her to undergo abortion. The petitioner asked the respondent to bring Rs.25 lakhs from her parents or to get land to an extent of 3-1/2 cents. By utilizing that money, the petitioner wanted to start a Cable TV business. During summer vacation of the year 2012-2013, the respondent went to her parents house. At that time, the petitioner



the house, where they were residing and thus, he drove her to her parental home at Sholavandan. As the child was studying in a school at Madurai, it was very difficult for the respondent to send her to school by bus. The car given at the time of marriage was utilized by the petitioner and his family members and they refused to return the same. Hence, the respondent filed a complaint to get return of the car to utilize the same for her child and thereafter, got return of the same. Except thali, all the jewels are in the custody of the petitioner. The petitioner is acting to the tune of his parents. The petitioner has filed this petition with false allegations. Therefore, the petition is liable to be dismissed.

5. Before the trial Court, on the side of the petitioner, PWs.1 to 3 were examined and Exs.P1 to P15 were marked. On the side of the respondent, RW1 to RW3 were examined and Exs.R1 to R34 were marked.

6. The trial Court, after considering the oral and documentary evidence adduced on either side, has allowed the petition, thereby granted decree of divorce on the ground of cruelty and desertion. Aggrieved by the same, the respondent/wife filed appeal in H.M.C.M.A.No.7 of 2014. The first appellate Court, after reappraising the oral and documentary evidence, has allowed the appeal holding that the trial Court has not properly appreciated the oral and documentary evidence and dismissed the H.M.O.P. petition. Aggrieved by the same, the petitioner/appellant/husband has filed this second appeal.

7. The learned counsel for the petitioner/appellant submitted that immediately after the marriage, the respondent compelled the petitioner for separate living and caused several nuisance. After mediation, the petitioner and the respondent lived in the ground floor of his petitioner's house. Thereafter, the respondent started to demand partition of the property of the petitioner's father and quarrelled with the petitioner. Hence, the petitioner started to live with his parents at the first floor of the house. Based on the false complaint given by the respondent, the petitioner lost his job, which caused mental stress and cruelty to the petitioner. He would further submit that the respondent has filed series of criminal cases one after another on the petitioner/appellant and his family members and caused cruelty. The respondent has not produced any document to show that the petitioner has forcibly aborted the child in the womb of the respondent. The respondent deserted the petitioner for the past eight years. As there is a long period of separation, it lead to mental cruelty. The trial Court, after considering the above aspects, has rightly granted decree of divorce, but the first appellate Court, without properly looking into the above aspects, has erroneously reversed the finding of the trial Court and dismissed H.M.O.P. Thus, he prayed to allow this second appeal.



8. The learned counsel appearing for the respondent/wife submitted that the petitioner has not issued any notice before filing the H.M.O.P. petition for divorce. Since the respondent gave birth to a female child, the parents of the petitioner directed the petitioner and the respondent to form a separate family in the ground floor of the house. As the petitioner did not want second female child, on suspicion, he kicked the abdomen of the respondent/wife and caused for medical termination of pregnancy and the same has been proved by the respondent through Exs.R29 to 33. Though it is stated by the petitioner that he lost his job due to the complaint preferred by the respondent, it has not been proved by the petitioner by summoning his superiors as witnesses. He would further submit that during summer vacation, the respondent along with her child, visited to her parental home and when the respondent returned to matrimonial home, the petitioner locked the door, thereby compelled the respondent to stay in her parental home. The trial Court, without considering the above aspects, has erroneously allowed the HMOP petition and granted divorce. But, the first appellate Court, after reappraising the entire evidence and considering the above facts, has rightly set aside the order passed in the HMOP and dismissed the same. Therefore, there is no interference of this Court needed in this matter. Thus, he prayed to dismissed this second appeal.

9. Heard the learned counsel appearing for both sides and perused the materials available on record.

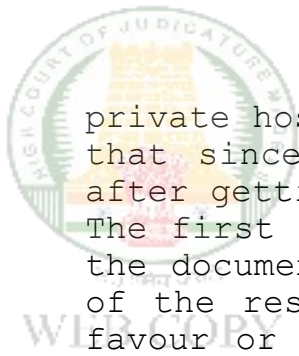
10. This Court made fervent attempt to settle the matter by calling both the parties. Though the parties appeared, the matter could not be settled.

11. The only question to be decided in this case is whether the judgment passed by the first appellate Court is sustainable or not?

12. Admittedly, there is no dispute with regard to solemnization of the marriage between the petitioner and the respondent and birth of the female child. According to the petitioner, on compulsion of the respondent, they formed a separate house in the ground floor of the petitioner's parents house. But, it was denied by the respondent as not true. A perusal of Ex.P6 would show that the respondent has filed C.M.P.No.5256 of 2012 seeking a direction to the petitioner to open the ground floor of the house and to permit the respondent to reside there and an order was also passed to that effect, vide Ex.P7. Even after getting favourable order, she did not start to live in the ground floor of the house alleging threat to her life. But, it has not been established so by the respondent.

13. It is the allegation of the respondent that due to purposeful hit made by the petitioner on the abdomen of the respondent, she was subjected to abortion. RW3, who was a staff of a

<https://hcs.courts.madras.gov.in/hcs/ves/w>



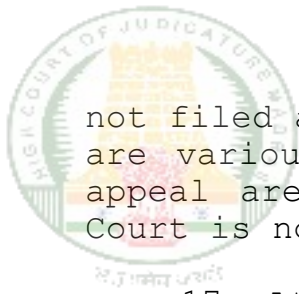
private hospital authority, has categorically stated in her evidence that since there was no sufficient growth, the child was aborted after getting consent from the petitioner as well as the respondent. The first appellate Court has generally stated in his judgment that the documents relating to abortion ie. Exs.R29 to R33 are in favour of the respondent/wife. It has not even mentioned what is in her favour or what is proved. If really the respondent got frustration by the act of the petitioner, she could have stated the factum of attack made by the petitioner and recorded the same before the hospital authorities and made a criminal complaint against the petitioner. It has not been done so by the respondent. Hence, it can be stated to be a false allegation. The false allegation leads to mental cruelty.

14. According to the petitioner, they have been in physical separation from 2009 onwards and the respondent lived separately in the ground floor of the house and he lived along with his parents in the first floor of the house. It has not been specifically denied by the respondent. Ex.P5 - Complaint filed by the respondent under the Domestic Violence Act would strengthen the version of separation. More over, PW1 to PW3 have categorically stated in their evidence about rudeness of language and adamant attitude of the respondent. The first appellate Court has rejected the evidence of PW1 to PW3 stating that they are related to each other. This Court is not inclined to accept the same in view of the fact that a dispute between husband and wife, which could have been mostly happened within the four walls of the house, could be stated only by the relatives, friends and neighbours.

15. According to the petitioner, he lost his job due to the complaint given by the respondent. It has not been specifically denied by the respondent in her counter that she has not sent any complaint against the petitioner. However, it has not been proved by the petitioner that only due to the complaint given by the respondent, he lost his job and therefore, the said contention cannot be accepted.

16. In this case, it is seen that the respondent has lodged a complaint - Ex.P5 under the Domestic Violence Act against the petitioner and his parents. The respondent has also filed an application (Ex.P6) dated 23.07.2012 under the Domestic Violence Act and it was subsequently numbered as D.V.A.No.5256 of 2012 and ordered on 30.07.2012. It is also seen that the respondent has lodged several criminal complaints raising various allegations against the petitioner and also filed suit in O.S.No.95 of 2015 restraining the petitioner from contracting any second marriage till the decision of the appeal in H.M.C.M.A.No.7 of 2014. Abusing the process of law, the respondent has also made a paper publication on 07.07.2017 in Dinamalar Newspaper against the petitioner with regard to the relief sought for in the suit. Though the respondent stated

<https://hcmcs.courtsgov.in/cases> to live with the petitioner, the respondent has



not filed any petition for restitution of conjugal rights. As there are various complaints interrelated to the issue involved in this appeal are pending before the respective authorities/forums, this Court is not inclined to go into those issue in detail.

17. At this juncture, this Court is of the view that it would be appropriate to refer to the following decisions:

(a) **Shobha Rani Vs. Madhukar Reddi**, reported in **1988 (1) SCC 105;**

"The expression cruelty has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of he conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself I bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted."

(b) **V.Bhagat Vs. D.Bhagat** reported in **1994 (1) SCC 337;**

"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 sufferings 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 is 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 accusation and allegations, regard must also be had to the context in which they were made."

(c) In the decision in **K.Srinivasa Rao Vs. D.A.Deepa**, reported in **(2013) 5 SCC 226**, the Hon'ble Apex Court has held in paragraph Nos.29 to 35 has held as follows:

"29.In our opinion, the High Court wrongly held that because the Appellant - Husband and the respondent-wife did not stay together there is no question of parties causing cruelty to each other. Staying together under the same roof is not a pre-condition for mental cruelty. Spouse can cause mental cruelty by his or her conduct even while he or she is not staying under the same roof. In a given case while staying away, a spouse can cause mental cruelty to the other spouse by sending vulgar and defamatory letters or notices or filing complaints containing indecent allegations or by initiating number of judicial proceedings making the other spouses life miserable. This is what has happened in this case.

30. It is also to be noted that the appellant-husband and the respondent-wife are staying apart from 27.04.1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in *Samar Ghosh*, if we refuse to sever the tie, it may lead to mental cruelty.

31.We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground of 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 amongs others necessitating severance of marital tie. A marriage, which is dead for all purposes cannot be revived by the Courts 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 Courts Decree.



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32. In V.Bhagat, this Court noted that Divorce Petition was pending for eight years and a good part of the lives of both the parties had been consumed in litigation, yet the end was not in sight. The facts were such that there was no question of reunion, the marriage having irretrievably broken down. While dissolving the marriage on the ground of mental cruelty this Court observed that irretrievable breakdown of marriage is not a ground by itself, but, while scrutinizing the evidence on record to determine, whether the grounds alleged are made out and in determining the relief to be granted, the said circumstance can certainly be borne in mind.

33. In Naveen Kohli, where Husband and Wife had been living separately for more than 10 years and a large number of criminal proceedings had been initiated by the wife against the husband, this Court observed that the marriage had been wrecked beyond the hope of salvage and Public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct defacto. It is important to note that in this case this Court made a recommendation to the Union of India that the Hindu Marriage Act, 1955 be amended to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce.

34. In the ultimate analysis, we hold that the Respondent-Wife has caused by her conduct mental cruelty to the Appellant-Husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court, the respondent wife expressed that she wants to go back to the appellant husband, but that is not possible now. The appellant husband is not willing to take her back. Even if we refuse decree of divorce to the appellant husband, there are hardly any chances of the respondent wife leading a happy life with the appellant husband because a lot of bitterness is created by the conduct of the respondent wife.

35. In Vijay Kumar, it was submitted that if the Decree of Divorce is set aside, there may be fresh avenues and scope for reconciliation between parties. This Court observed that judged in the background of all surrounding circumstances, the claim appeared to be too desolate, merely born out of despair rather than based upon any real, concrete or genuine purpose or aim. In the facts

<https://hcservices.ecourts.gov.in/hcservices/case> we feel the same."

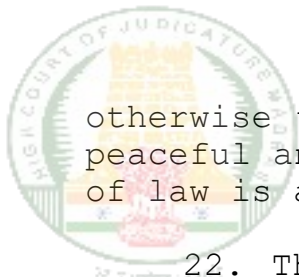


18. Cruelty is a course or conduct of one, which is adversely affecting the other. What is cruelty will depend upon the facts and circumstances of each case. In this case, the acts of the wife filing complaints after complaints against the husband and his family members also amount to cruelty. However, in this case, it cannot be said that there is no dirt on the back of the petitioner. The totality of the circumstances stated above would show that it would be difficulty for the parties to bury the past and to begin a new relationship of husband and wife.

19. Further, it is seen that the parties have been living separately for more than seven years. On a perusal of records, it is seen that both of them married on 20.08.2004. They are stated to be separated from 2009 onwards. The divorce petition has been filed on 29.12.2012. The decree of divorce granted by the trial Court on 30.07.2014. The decree of divorce was set aside by the first appellate Court on 20.02.2018. Though strenuous efforts have been taken by this Court to unite the couple, it went in vain. 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 cases, it may lead to mental cruelty.

20. In the matrimonial cases, when hearts unite, the law has no role to play. But, when it refuses to unite, then the Court has no option but to proceed as per law. In matrimonial matters, this court keeps in mind that it has to be very cautiously and sparingly to be applied before going to the extreme step of separating the couple. But, in the case on hand, the petitioner / husband refuses to live with the respondent and the Court cannot compel the petitioner to live with the respondent. The applicability of law is more important in matrimonial related issues. The long separation between the husband and wife should have taught a lesson, despite the allegations levelled against each other. They should have longed for each other, though the cases are pending against them. This Court could not see any such improvement despite my personal efforts to unite them. Therefore, this is a clear case of irretrievable breakdown of marriage also. In my considered view, it is impossible to preserve or save the marriage by force or coercion. Any further effort to keep it alive would prove to be totally counterproductive.

21. In my considered opinion, the trial Court, after considering the above aspects, has rightly granted the decree of divorce on the ground of cruelty and desertion. But, the lower appellate Court has erroneously reversed the finding of the trial Court and set aside the HMOP. In my view, in a case of this nature, <https://hcservices.ehcs.gov.in/hcservices/> view is possible, except the grant of divorce or



otherwise the balance span of life of both the parties would not be peaceful and there will be continuous mental cruelty. The question of law is accordingly answered in favour of the petitioner/husband

22. Though this Court is inclined to direct the petitioner to grant permanent alimony to the respondent, it is represented by the learned counsel for the petitioner that the respondent has already filed Maintenance case in M.C.No.10 of 2019 on the file of the Family Court, Madurai and that she has also sought for the relief of maintenance in D.V.O.P.No.5256 of 2012. Therefore, this Court has not ordered for permanent alimony.

23. In the result, this Civil Miscellaneous Second Appeal is allowed and the judgment and decree passed by the first appellate Court is set aside and the order passed by the trial Court is restored. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

1.The Principal District Judge,
Madurai.

2.The Subordinate Judge,
Melur.

COPY TO:
THE SECTION OFFICER,
V.R. SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI. (2 COPIES)

+1 CC to M/s.P.GANAPATHI SUBRAMANIAN, Advocate (SR-85786[F] dated 06/09/2019)

+5 CC to M/s.K.R.LAXMAN, Advocate SR-85948 & 85452

Judgment made in
C.M.S.A(MD) .No.32 of 2018
05.09.2019

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JM/03.10.2019/2P/11C