

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.S.A.No.41 of 2011

V.Saritha Kumari

.. Appellant/Respondent

Versus

S.Anbarasu

... Respondent/Petitioner

Prayer: Civil Miscellaneous Second Appeal has been filed under Section 100 of Civil Procedure Code read with Section 28 of the Hindu Marriage Act, 1955, against the judgment and decree dated 21.03.2011 made in C.M.A.No.9 of 2006 on the file of learned Principal District Judge, Krishnagiri, reversing the judgment and decree dated 27.04.2006 made in MOP No.3 of 2003 on the file of learned Subordinate Judge, Krishnagiri.

For Petitioner : Mr.M.V.Krishnan

For Respondent : Mr.V.Raghavachari

O R D E R

Heard the parties through Video Conferencing due to COVID-19 pandemic.

2. This Civil Miscellaneous Second Appeal is directed against the impugned judgment and decree dated 21.03.2011 made in C.M.A.No.9 of 2006 on the file of learned Principal District Judge, Krishnagiri, reversing the judgment and decree dated 27.04.2006 made in M.O.P.No.3 of 2003 on the file of learned Subordinate Judge, Krishnagiri.

3. Mr.M.V.Krishnan, learned counsel appearing for the appellant/wife submitted that the marriage between the appellant and the respondent was solemnized on 13.11.1997 in Billakottai Village, Krishnagiri Taluk, and after solemnization of marriage, they were living only for a period of 41 days and during such short period, there was a demand for dowry, however, parents of appellant/wife did not meet out such demand, as he had demanded Maruti Car. Thereafter, she was ill-treated by her husband and his family members. Subsequently, the appellant/wife gave a police complaint before All Women Police Station, Bargur, and the same was registered for an offence under Sections 498(A) and 506(ii) of

IPC read with Sections 3 and 4 of Dowry Prohibition Act. The respondent/husband filed M.O.P.No.32 of 1998 seeking for restitution conjugal rights before the learned Principal Subordinate Judge, Krishnagiri. The appellant/wife also gave further police complaint before Kalasipalayam Police Station, Bangalore, for demanding dowry and ill-treatment, however, the said complaint was transferred to All Women Police Station, Bargur, and registered for an offence under Sections 498(A) and 506(ii) of IPC read with Sections 3 and 4 of Dowry Prohibition Act. But, the said criminal case, after full trial, was dismissed by the learned Judicial Magistrate, Krishnagiri, on 31.05.2002 passed in C.C.No.493 of 2001, acquitting the respondent/husband and his family members and aggrieved by the same, when revision was filed in Crl.R.C.No.1442 of 2002, the same was also dismissed by this Court.

4. While the matter stood as above, the respondent/husband has filed M.O.P.No.3 of 2003 seeking for divorce on the ground of desertion and cruelty, more particularly, in view of criminal case filed against him as stated supra. Since this Court in catena of decisions has held that mere filing of criminal case cannot be construed as a ground for divorce, learned trial Court has rightly dismissed the divorce petition making it clear that no case was made out for accepting the cruelty by wife against her husband and against which, when C.M.A.No.9 of 2006 was filed, learned Principal District Judge, Krishnagiri, after considering the oral and documentary evidence adduced by both parties, allowed the appeal by reversing the judgment and decree passed by the learned trial Court. The reasonings given by the learned first appellate Court that the marriage was held against the will of wife and that she left the matrimonial home with the consent of her husband are all erroneous and therefore, the same cannot be accepted, for, after solemnization of marriage on 13.11.1997, the respondent/husband did not allow the appellant/wife to have a peaceful and happy married life as he was, all the time, demanding dowry in the form of Maruti Car, etc. Since there was a continuous demand followed by cruelty caused by the respondent/husband, the appellant/wife was under compulsion to give a police complaint before All Women Police Station, Bargur, and the same was registered for offence under Sections 498(A) and 506(ii) of IPC read with Sections 3 and 4 of Dowry Prohibition Act and that the said criminal case was also ended in acquittal, therefore, as held by this Court in catena of decisions, mere filing of criminal case cannot be construed cruelty and on this basis, learned counsel prayed for quashing the impugned judgment and decree passed by the learned first appellate Court.

5. Mr.V.Raghavachari, learned counsel appearing for the respondent/husband submitted that since the appellant/wife openly opposed the prayer for restitution of conjugal rights stating that she is not willing to live with her husband, the respondent/husband, after withdrawing M.O.P.No.32 of 1998 filed for restitution of conjugal rights from the file of learned Sub-Court, Krishnagiri, and after waiting for two long years, had filed M.O.P.No.3 of 2003 seeking for divorce taking a stand that after marriage, she only left the respondent and that she lived only for 41 days and during those 41 days, she stayed at her parents' home for 21 days and 2 or 3 days in her grandmother's home and therefore, she hardly stayed with her husband only for three weeks. Secondly, when the respondent/husband filed M.O.P.No.32 of 1998 seeking for restitution of conjugal rights, opposing the said prayer, the appellant/wife has filed a counter affidavit expressing her unwillingness to live with her husband. Therefore, when the respondent/husband has rightly taken a step to bring her back to matrimonial home and sought for an order of restitution of conjugal rights, only the appellant/wife was all the time opposing the prayer for restitution of conjugal rights and the same could be seen from Ex.A5-counter affidavit filed by the wife that she was not interested to live with her husband. Such kinds of attitudes would depict that she only deserted her husband and caused cruelty not only to her husband but also to the entire family members of her husband.

6. Adding further, learned counsel argued that when it is settled legal position that if any one of the spouses gives criminal complaint against another and criminal Court takes the matter for trial and finally whether it is ended in conviction or acquittal, such humiliation would cause mental cruelty. In the present case, when the appellant/wife gave a complaint before All Women Police Station, Bargur, for an offence under Sections 498(A) and 506(ii) of IPC read with Sections 3 and 4 of Dowry Prohibition Act, the same was taken up for trial in C.C.No.493 of 2001 and after full trial, the respondent/husband and his family members were acquitted on merits on 31.05.2002 and thereafter, she preferred criminal revision before this Court and this Court also dismissed the same. Therefore, such conducts of wife would indicate that she has caused mental cruelty to her husband and also deserted him for the reason that she lived only for 41 days and by filing counter affidavit in the petition filed for restitution of conjugal rights by husband, she had expressed her unwillingness to live with her husband. Therefore, learned first appellate Court has rightly reversed the judgment and decree passed by the learned trial Court. Hence, the appeal filed by the wife, being bereft of any merit, is liable to be dismissed.

7. I fully agree with the above said submissions of the learned counsel for the respondent/husband. When the marriage was solemnized on 13.11.1997, surprisingly, both of them were lived together only for three weeks and in the evidence recorded before the learned trial Court, the wife deposed that out of 41 days of married life, she stayed with her parents for 21 days and 2 or 3 days with her grandmother and she lived only for three weeks with her husband. Therefore, learned first appellate Court, appreciating the fact that out of 41 days of marriage, she lived only for three weeks, and also taking note of the counter affidavit filed by her in M.O.P.No.32 of 1998 expressing her unwillingness to live with her husband, rightly came to the conclusion that the wife is guilty of deserting her husband. Hence, I am of the considered view that a case of desertion within the meaning of Section 13(1)(ib) of the Act has been made out by the respondent/husband.

8. Secondly, after 41 days of married life, since the appellant/wife did not return back to matrimonial home, the respondent/husband filed M.O.P.No.32 of 1998 seeking for restitution of conjugal rights before the learned Principal Subordinate Judge, Krishnagiri. As stated above, in the said petition, the appellant/wife filed a counter affidavit expressing her unwillingness to live with her husband. After filing of M.O.P.No.32 of 1998, the wife had lodged a police complaint before Kalasipalayam Police Station, Bangalore, alleging demand of dowry and ill-treatment, however, the said complaint was transferred to All Women Police Station, Bargur, and registered for an offence under Sections 498(A) and 506 (ii) of IPC read with Sections 3 and 4 of Dowry Prohibition Act. It is seen from Ex.A6 that learned Judicial Magistrate, Krishnagiri, after full trial, finding no merit whatsoever, acquitted the respondent/husband and his family members vide order dated 31.05.2002 passed in C.C.No.493 of 2001. Thereafter, as could be seen from Ex.A7, when she had filed a criminal revision in Crl.R.C.No.1442 of 2002, the same was also dismissed by this Court. Thus, filing of criminal complaint with bad motive to punish her husband for offence under Sections 498(A) and 506(ii) of IPC read with Sections 3 and 4 of Dowry Prohibition Act and prosecuting the same even after dismissal before this Court in Crl.R.C.No.1442 of 2002, would definitely amount to cruelty against the husband and his family members. Therefore, it is a fit case for dissolution of marriage and if the divorce is not granted, again, she would file false case against her husband and his family members and life of both would not be peaceful.

9. Therefore, aforesaid sequence of various incidents brought out through evidence would depict that the relationship between the husband and wife was irretrievably broken and in view of non-cooperation and hostile attitude of

the appellant/wife, the respondent/husband was subjected to serious traumatic experience and this can be safely termed as cruelty coming within the purview of Section 13(1)(ia) of the Hindu Marriage Act and on this score, I am of the considered view that the respondent/husband is entitled for the decree of dissolution of marriage under Section 13(1)(ia) of the Hindu Marriage Act.

10. In fine, for the reasons stated above, this Court, finding no question of law much less substantial question of law arises in this appeal, is inclined to dismiss the same and accordingly, this Civil Miscellaneous Second Appeal is dismissed. Consequently, judgment and decree passed by the learned first appellate Court are confirmed and the judgment and decree passed by the learned trial Court are set aside. No Costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

rkm

To

1.Principal District Judge, Krishnagiri.

2.Subordinate Judge, Krishnagiri.

+lcc to Mr.V.Raghavachari, Advocate SR.28556

C.M.S.A.No.41 of 2011

MP(CO)

CB(22/01/2021)

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