

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.09.2020

PRONOUNCED ON : 03.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1978 of 2018
and CMP.Nos.15316/2018 & 6543/2020

(Through Video Conferencing)

Dilipkumar ... Appellant/ Petitioner

vs.

Umamaheswari @ Chellysha ... Respondent/ Respondent

This Civil Miscellaneous Appeal filed under Section 19(1) of the Family Courts Act, to set aside the order dated 04.05.2018 passed by the Family Court, Vellore in F.C.O.P.No.3 of 2016.

For Appellant : Mr.R.Natarajan

For Respondent : Mrs.Radha Gopalan

J U D G M E N T

C.SARAVANAN, J.

The appellant (husband) is aggrieved by the impugned Fair and Decretal Order dated 4.5.2018 passed by the Family Court at Vellore in F.C.O.P.No. 3 of 2016.

2. By the impugned Fair and Decretal Order, the Family Court has dismissed F.C.O.P.No.3 of 2016 filed by the appellant under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955 to dissolve the marriage solemnized between the appellant and the respondent (wife) on 12.09.2014 on the ground of cruelty.

3. The appellant had alleged in F.C.O.P.No.3 of 2016 that the relationship between the appellant and the respondent were strained and were not cordial and that the respondent left the matrimonial home within a period of 1 ½ months from the date of the marriage and never returned to the matrimonial home.

4. The appellant alleged that the respondent often quarreled with him. The appellant further stated that for the sake of good order and dignity and to maintain the status in the society, the appellant tolerated the abuses of the respondent.

5. It was further alleged that the appellant was abused and humiliated by the respondent in presence of her parents when he visited the respondent to enquire about her well being when he came to know that the respondent was pregnant and expecting their child.

6. It was further alleged that the respondent's parents also scolded and abused the appellant's parents and that during the month of October 2015 and the respondent's father had allegedly attacked the appellant's parents and only after the appellant's mother had made a telephonic complaint to the Viruthampattu Police Station, Vellore District, the respondent's parents left the appellant's house.

7. The other allegation leveled against the respondent was that before the marriage, the respondent was working in Bank of Ceylon in Chennai and allegedly had an affair with her classmate (name not disclosed for the sake of privacy) which fact was suppressed and that the respondent continued to be in touch with the said person even after the marriage.

8. The appellant further alleged that the respondent showed no interest in marital life even after the marriage and he was forced to lead a life of celibate.

9. It was further alleged that the respondent continued to have telephonic conversation secretly with her classmate (paramour) even after the marriage and whenever the appellant confronted the respondent, he got evasive replies from the respondent and she would get aggressive and shout at the appellant.

10. In this appeal, it was submitted on behalf of the appellant that the Family Court erred in dismissing the F.C.O.P.No.3 of 2016 filed by the appellant. It is submitted that the evidence on record and the deposition of the witnesses overwhelmingly demonstrated that the respondent was a troublesome person prone to picking up quarrel for trivial and sundry reasons as was evident from the contradictory statements made by the respondent in the counter statement and during oral evidence before the Family Court.

11. It is further submitted that the Family Court failed to note the dispute between the appellant and the respondent were not due to ordinary wear and tear of family life, but on account of cruelty by the respondent on the appellant and the institution of marriage between the appellant and the respondent had irretrievably broken.

12. The respondent in her counter denied the allegations and submitted that at the time of the marriage, the appellant was unemployed and that the parents of the appellant had promised to set up "Sai Balaji Diary Unit's and that the marriage was celebrated with extravagance by spending a huge sum of Rs.50 lakhs considering the status of the respondent's family and the educational qualification of the appellant and the respondent.

13. The respondent further submitted that out of the wedlock, a daughter was born and was named as Shreya Sri and that the appellant and the respondent lived amicably in the matrimonial home along with her in-laws for a very short period, but was driven out by the appellant.

14. The respondent further submitted that her in-laws, particularly, father and mother of the appellant scolded the respondent for trivial reasons and the appellant took sides them along with his sister Selvalakshmi.

15. The respondent further submitted that the parents of the appellant attempted to force the respondent to abort the pregnancy and it is on their instigation the appellant drove the respondent from the matrimonial home.

16. It was further submitted that the appellant would often spend time with his parents and never offered any conjugal bliss to the respondent and he would often sleep with his mother. It is further submitted that only after family reconciliation, the appellant started sleeping with the respondent. The respondent was driven out matrimonial home.

17. They found fault with the respondent and made it difficult for the respondent to continue to live with them in the matrimonial home. That apart, the respondent further submitted that the appellant and his parents would assault her and verbally abuse the respondent. She further submitted that the appellant had put an embargo on the respondent from making telephone calls to her parents.

18. The respondent further submitted that the appellant and his sister harassed her and made snide remarks as if the respondent was an unlucky person and brought bad luck to the appellant and that the appellant suffered business loss only after marrying the respondent.

19. It was further submitted that the family of the appellant had forced the respondent to demand for a partition of the family properties by asking her share from her parents to help the appellant tide over his business loss.

20. It was further submitted that the appellant's mother often threatened to commit suicide by stating that if the appellant did not drive the respondent away from the matrimonial home. The respondent further submitted that she had to leave the matrimonial home apprehending danger to herself and to the child in her womb.

21. It was further submitted that the family of the appellant also failed to conduct the customary ceremony (valakappu) associated with the 1st pregnancy to welcome the arrival of the 1st child in advance as per the custom any practice. It was further submitted that neither the appellant nor his parents visited the respondent after she left the matrimonial home. The respondent further alleged that the appellant also did not visit her during the delivery of their child or thereafter.

22. Further the arrival of the girl child was yet another reason for demanding divorce from the respondent. That apart, appellant and family member resorted to unhealthy gossip and character assassination of the respondent in the neighbourhood and thereby tarnished the image of the respondent by alleging that the respondent was having an affair with her classmate (name not disclosed for privacy) which made it difficult for the respondent return back to matrimonial home. The said classmate was neither summoned nor arraigned as a party respondent to the proceedings before the Family Court in

23. The respondent also blamed Selvalakhmi, the sister of the appellant for the quarrels between them and that it is only on account of the advice of the appellant's sister, the appellant and his parents turned hostile against the respondent.

24. The respondent further submitted that she was ready and willing to live amicably with the appellant. Under the circumstances, the respondent had prayed for dismissal of the aforesaid F.C.O.P.No.3 of 2016 filed by the appellant before the Family Court, Vellore.

25. We have considered the arguments advanced on behalf of the appellant and the respondent by their respective counsel. We have also perused the impugned judgment and decree of the Family Court and the evidence on record which were available before the Family Court.

26. The marriage was solemnized on 12.09.2014. Even according to the appellant, they have hardly lived together. During this period, the marriage was consummated. Later a girl child was born to them but the appellant never bothered to bring them back with him.

27. The Family Court after considering the evidence on record and the deposition of the appellant as P.W.1 and the respondent as R.W.1 and the testimony of RW 1 and RW2 concluded that the appellant had not made a case for dissolving the marriage on the grounds of cruelty by the respondent.

28. On a overall consideration of the evidence on record, we are of the view that there is no error in the impugned order. The appellant has not made out a case for dissolution of marriage on account of alleged cruelty by the respondent. Cruelty if any, was by the appellant on the respondent.

29. During cross-examination, the appellant has also clearly admitted that the marriage between the appellant and the respondent was an arranged marriage and only after a thorough background verification of the respondent and her family. The appellant also admitted he knew where the respondent studied and her qualification.

30. The appellant has also admitted that he had no direct information about the alleged affair and that the basis of his

suspicion was a tip off from a relative. However, the said relative was produced as a witness.

31. The appellant has also not produced any records in the form of telephone bills to show that the respondent was indeed making telephonic calls to her alleged paramour secretly.

32. Further RW2, a relative of the appellant through appellant's sister's family has also deposed that the so-called paramour of the respondent was merely her classmate and there was no relationship between them.

33. Thus, it stands confirmed that the respondent neither had an affair with her so-called paramour i.e her classmate nor continued to have an affair muchless extra-marital affair after her marriage with the appellant.

34. It was not open for the appellant to sully the character of the respondent to sour the relationship between the appellant the respondent.

35. Even if the appellant's sister and mother had no role in driving the respondent from the matrimonial home, it is evident that the appellant ensured that the respondent left the matrimonial home by sullyng her character.

36. Though in the proof affidavit, the appellant alleged that the respondent was a short tempered person and often threw things and was not interested in living with him and that they would often quarrel, there is no evidence to substantiate the same.

37. However, from the allegation levelled against the respondent, we are able to visualize that the appellant and the respondent may have indulged in frequent arguments during their short stay of three months together after the marriage.

38. The respondent came to live with the appellant along with his family in a joint family after the marriage. He should have been careful while showing his frustration. He ought to have been aware of the fact that the respondent would feel humiliated if chose to question her chastity by chiding her of having extra marital relationship with her in the presence of the in-laws.

39. In our view, it was quite natural for the respondent to vent out her frustration on the appellant, considering the fact that the appellant sullied her character. The respondent could not have remained mute and swallowed the insults heaped on her by the appellant in the midst of his family members.

40. Though the appellant alleged that he was insulted by the respondent and her parents during February 2015, when he purportedly visited the respondent in parents house to enquire about her health, in his cross-examination, he has clearly admitted that he has never visited the respondent after she left the matrimonial home in December 2014. He has also made no effort to bring her back to the matrimonial home.

41. The appellant has also admitted during cross examination that neither he nor his family members either visited the respondent at her parent's house or took to any steps for celebrating the 1st pregnancy of the respondent to welcome arrival of the 1st child which is normally celebrated as per the prevailing customs in this part of the country or made any attempt to bring the respondent back to the matrimonial home.

42. Thus, the appellant had resorted falsehood before the Family Court in a desperate bid to dissolve the marriage solemnized between the appellant and the respondent on false and unsubstantiated grounds.

43. The allegation that the parents of the respondent had abused the appellant and his parents in his house and only after an oral telephonic complaint was given by his mother to the Police Station, they left his house also remains unsubstantiated. On going through the records also it is noticed that no documents have been filed to substantiate any criminal complaint before any police station.

44. Further, even according to the appellant, the respondent lived only for few months in the matrimonial home. It is during this short period, the marriage was consummated and a girl child was born. Later the respondent was driven out of the matrimonial home. It is thus clear that the appellant has not taken any responsibility as a husband and as a father of the child born to them.

45. The appellant has also admitted in his deposition during cross examination that at the time of the marriage, he was running a business under the name and style of "Sai Balaji Diary Unit" which sustained loss and he had expected the respondent help him tide over his financial difficulties. Though he may or may not have demanded any amounts from respondent's family, it is quite clear that the appellant allowed the business failure to affect his equation with the respondent.

46. In our view, the appellant and the respondent have hardly lived together to experience the pain and pleasure of married life. The appellant has exhibited traits of a husband who wants to shirk his responsibility as man to his wife and child.

47. It is evident that after getting married, the appellant concluded either he was either incapable of shouldering responsibilities associated with marriage or has imagined that the respondent had brought ill luck to him as his business collapsed.

48. The appellant perhaps expected the respondent and her family to bail him out of his financial mess but sensed resistance and unwillingness on the part of the respondent and therefore imagined reasons to conclude that the respondent was cruel to him.

49. The appellant appears to have developed an aversion and a dislike for the respondent and thus went ahead to drive the respondent out from the matrimonial home and later filed F.C.O.P.No.3 of 2016. Unfortunately, the elders have also not taken any steps to unite the appellant and the respondent even after a girl child was born out of the wed lock

50. In the course of the proceeding before this Court, the appellant filed CMP.No.6543 of 2002. It was to mark certain WhatsApp messages sent by the respondent to the appellant during the period from 24.9.2018 to 30.1.2020 to demonstrate that the marriage had irretrievably broken and respondent was not interested in continuing with the marriage.

51. The learned counsel for the appellant therefore attempted to persuade us to grant a decree of divorce to the appellant on the ground of irretrievable break down on the marriage.

52. Respondent in turn filed a counter and also enclosed copies of WhatsApp communications exchanged between the appellant and the respondent to demonstrate that the appellant was misrepresenting to the Court. It was submitted that the appellant was selectively showing only some of the response of the respondent ignoring the provocations which led to the reply of the respondent.

53. We have perused the content of the WhatsApp messages exchanged between the appellant and the respondent during the above period. It is to be noted that they are exchange of communication between the appellant and the respondent after the decree was granted during the pendency of the appeal.

54. They seem to indicate that the appellant was taunting and provoking the respondent. They were intended to elicit negative response from the respondent. Therefore, we cannot give any important to them.

55. Even otherwise, selective response of the respondent cannot be considered in isolation. They have to be judged in the background of the insinuations of the appellant.

56. We are therefore not inclined to give too much credence to these messages as they are not only irrelevant for the final disposal of the present appeal. They merely show the appellant in a poor light. We therefore refrain from making further remarks except to make it clear that our decision in this order is not influenced by these WhatsApp messages which have been filed by either of the parties.

57. In our view, the relationship had not even strengthened beyond tying of the marital chord on 12.9.2014 in the marriage ceremony. The appellant has not taken any steps to strengthen the matrimonial relationship.

58. Instead, the appellant took the easy way out by driving the respondent away out of the matrimonial home. The appellant failed in his responsibility as a provider and protector of the respondent and their child. Therefore, the appellant cannot take advantage of his misdeed to the detriment of the respondent.

59. In our view, the Family Court has come to a fair conclusion on facts that the appellant has not made out any case of cruelty by the respondent on the appellant.

60. We therefore find no reasons to interfere with the impugned fair and decretal order passed by the Family Court in dismissing the F.C.O.P.No.3 of 2016. We therefore dismiss the present appeal filed by the appellant. No cost. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kkd

To

The Judge,
Family Court,
Vellore.

1 cc to Ms.S. Radha Gopalan, Advocate, Sr. 35697

2 ccs to Mr.R. Natarajan, Advocate, sr. 35560

C.M.A.No.1978 of 2018 and
CMP.Nos.15316/2018 & 6543/2020

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