



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.255 of 2018

Siva Kumar

S/o Mohan

.. Appellant/Petitioner

-vs-

Jayanthi

W/o Sivakumar

.. Respondent /Respondent

Memorandum of Grounds of Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, against the fair and decretal order dated 18.04.2017 made in F.C.H.M.O.P.No.107 of 2016 on the file of the learned Judge, Family Court, Dharmapuri.

For Appellant :: Mr.G.Charles Muthu Shanthan

For Respondent :: Ms.G.Sumitra

JUDGMENT

(Judgment of the Court was made by T.RAJA, J.)

This civil miscellaneous appeal has been directed against the impugned fair and decretal order dated 18.4.2017 passed by the learned Judge, Family Court, Dharmapuri in F.C.H.M.O.P.No.107 of 2016, refusing the appellant's prayer for divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955.

2. Learned counsel appearing for the appellant submitted that when the marriage was solemnized between the appellant and the respondent on 17.4.2011 at Salem, as per the Hindu rites and customs, in the presence of the well-wishers of both families, from the day of marriage, the behaviour and conduct of the respondent/wife were not only rude and insulting, but also quarrelsome, because she was all the time insisting for a separate residential home. However, when the matrimonial life was going on, they were blessed with a daughter on 5.1.2012. Thereafter, the respondent came back to the matrimonial home during April, 2012. Again she created an unhealthy atmosphere



in the family and finding fault with the mother of the appellant for silly reason, again started quarreling. Taking justification from the bickering, the respondent again left the matrimonial home during May, 2012 under the guise of preparing for the TET exam. Moreover, the appellant's family members were also put to mental agony. Learned counsel appearing for the appellant also submitted that precisely, to talk about the conduct and behaviour of the respondent, the two attempts made by the respondent in criminally prosecuting the appellant and his family members, would amply demonstrate how she had ill-treated and misbehaved with the appellant/husband and also with the father-in-law, mother-in-law and the unmarried sister-in-law. At one point of time, when a criminal case was registered in Crime No.172 of 2013 based on the complaint preferred by the sister of the appellant against the respondent and her brothers, a counter case was registered in Crime No.173 of 2013. Based on the said false complaint, the mother and the unmarried sister of the appellant were arrested and remanded to judicial custody for 6 days and the said case is still pending in the FIR stage on the file of Karimangalam Police Station, Dharmapuri with the submission of the report by the Inspector of Police, Karimangalam Police Station to the learned Judicial Magistrate, Palacode requesting to close the case. Again in another criminal case registered in Crime No.1 of 2014 by the respondent's family, the poor mother, aged about 62 years and the unmarried sister of the appellant were again remanded to judicial custody for 7 days. Finally, when the said case was taken up for trial by the learned Judicial Magistrate, Palacode in C.C.No.116 of 2014, finding that the prosecution failed to prove the case against all the accused, acquitted the appellant and his family members, by a judgment dated 7.11.2020. Similarly, the case filed by the appellant's sister against the respondent's family in Crime No.172 of 2013 also ended in acquittal by the judgment dated 7.5.2014 passed in C.C.No.163 of 2014 by the learned Judicial Magistrate, Palacode. When it is a well settled legal position laid down by this Court as well as the Apex Court in umpteen cases holding that if either of the spouse to the marriage lodges a false criminal case, as a result the family members concerned were taken to the police station and put behind the bars, it is good enough to hold against the one who has initiated the false criminal case as guilty of causing cruelty, both mentally and physically. In the present case, when the respondent has miserably and consecutively failed to establish her case that the appellant caused any cruelty from his side, it goes without saying that their matrimonial life has come to an end. Even in spite of the above mentioned two orders passed by the learned Judicial Magistrate, Palacode dismissing



the cases filed by both parties, if this Court shows any hesitation in granting the decree for dissolution of marriage held on 17.4.2011, both the husband and wife in this case will not be able to live happily. This crucial aspect has been completely omitted by the learned Judge, Family Court, Dharmapuri. Therefore, the fair and decretal order is liable to be set aside. Concluding his arguments, learned counsel appearing for the appellant also submitted that when the respondent has chosen to live separately from the matrimonial home from May, 2013 till now and when she has also not moved any application under Section 9 of the Hindu Marriage Act for restitution of conjugal rights, that also clearly goes to show that she is not ready for restitution of conjugal rights. Therefore, the findings and conclusions reached by the learned Judge, Family Court, Dharmapuri are liable to be interfered with, he pleaded.

3. Ms.G.Sumitra, learned counsel appearing for the respondent, while assailing the arguments advanced by the learned counsel for the appellant, pleaded that when the respondent/wife was not able to tolerate the misbehaviour at the hands of the appellant and also from his family members, she was constrained to go to the police station, but ultimately the trial Court has disbelieved her evidence, for the reason that the prosecution failed to establish its case beyond reasonable doubt. But curiously, when there is no iota of doubt in the version of the respondent, her case has been wrongly disbelieved. Even the dismissal of the two criminal cases preferred by either side cannot be put against the respondent, because she is always ready and willing to live with her husband, inasmuch as her daughter, born on 5.1.2012, is also now aged about 10 years. Secondly, the minor daughter's education is being taken care of only by the respondent, who is also eking out her livelihood as a teacher in an aided school with a meagre income. Thirdly, as a dutiful father, till date, the appellant has not even come forward to pay the maintenance as ordered by the Family Court and there is accumulation of arrears. Although the respondent is earning, the appellant ought to have come forward to pay the reasonable monthly maintenance to her daughter. That also has not been taken care of. That shows his conduct. The learned counsel also stated that since both the parties have prosecuted each other, the evidence on record shows that they may not be able to live together in future. Therefore, the findings and conclusions reached by the learned Judge, Family Court, Dharmapuri being unassailable, do not call for any interference.



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4. But we are unable to find any justification on the contentions of the respondent's counsel. Moreover, the findings recorded by the learned Judge, Family Court, Dharmapuri do not appeal to us, for the following reasons. Firstly, when the marriage was solemnized on 17.4.2011, thereafter, the parties were not living happily. When the appellant has taken out a petition under Section 13(1)(i-a) of the Hindu Marriage Act charging the respondent that she had committed several instances of cruelty, two of the instances were also brought before us by the appellant. Finally the judgment dated 7.11.2020 passed in C.C.No.116 of 2014 by the learned Judicial Magistrate, Palacode clearly shows that the appellant's mother, aged 62 years, was taken to the police station and remanded to judicial custody, not only once but twice. Again the unmarried sister of the appellant was also remanded to judicial custody on the basis of the complaint given by the respondent. But when the veracity of the complaint was looked into, nowhere the trial Court, while considering the prosecution case, has agreed and accepted the charge levelled against the appellant, his mother and his unmarried sister.

5. Learned counsel appearing for the appellant submitted that with great difficulty, the appellant and his aged father escaped from the clutches of the false case. While they were carrying on the agricultural activities in the field, after knowing the arrival of police and nabbing the old mother and the unmarried sister, but for their escape, they would have also been put to unthinkable mental agony, physical cruelty and humiliation in the eyes of the public. In any event, when the unmarried sister of the appellant was twice arrested and remanded to judicial custody, with great difficulty, they were able to find a good alliance and if the respondent comes back, this would once again endanger her matrimonial life.

6. We also agree with the said argument advanced by the learned counsel appearing for the appellant. The reason being, it is a well settled legal position that when either of the spouse to the marriage files a false criminal case leading to the arrest and remand into judicial custody of the family members of the other, that would indicate that there has been a substantial physical and mental cruelty caused by the one who has set the law into motion by filing a false case. Useful reference can be had from the judgment of the Apex Court in K.Srinivas v. K.Sunita, (2014) 16 SCC 34 holding that filing of false criminal complaint by the wife against husband and his family members constitutes matrimonial cruelty. The relevant paragraphs of the said judgment are extracted hereunder:-



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" 1. In this appeal, the counsel for the appellant has sought to draw our attention to all the arguments that had been addressed before the High Court on behalf of the appellant-husband in support of his claim for dissolution of his marriage to the respondent by a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. We have, however, restricted him to the ground of alleged cruelty on account of the filing of a criminal complaint by the respondent against the appellant and several members of his family under Sections 498-A and 307 of the Penal Code, 1860 (IPC). We did this for the reason that if this ground is successfully substantiated by the petitioner, we need not delve any further i.e. whether a marriage can be dissolved by the trial court or the High Court on the premise that the marriage has irretrievably broken down. This nature of cruelty, in the wake of filing of a false criminal case by either of the spouses, has been agitated frequently before this Court, and has been discussed so comprehensively and thoroughly that yet another Judgment on this well-settled question of law, would be merely a waste of time. A complete discourse and analysis on this issue is available in a well-reasoned judgment in K.Srinivas Rao v. D.A.Deepa, (2013) 5 SCC 226, in which numerous decisions have been cited and discussed. It is now beyond cavil that if a false criminal complaint is preferred by either spouse it would invariably and indubitably constitute matrimonial cruelty, such as would entitle the other spouse to claim a divorce.

5.....This, it seems to us, is clearly indicative of the fact that the criminal complaint was a contrived afterthought. We affirm the view of the High Court that the criminal complaint was "ill advised". Adding thereto is the factor that the High Court had been informed of the acquittal of the appellant-husband and members of his family. In these



Marriage Act, when the respondent, employed as a teacher in an aided school, is also taking care of her daughter aged about 10 years, we asked the learned counsel appearing for the appellant to spell out as to how much he can pay as lump sum, in the interest of the daughter's future. In reply, the learned counsel submitted that in addition to the sum of Rs.4,00,000/- towards arrears of maintenance, the appellant is willing to pay a further sum of Rs.10,00,000/- within a reasonable time. Considering the fact that the respondent is maintaining and taking care of her minor daughter, who is now aged about 10 years, we hereby direct the appellant to pay a lump sum of Rs.15,00,000/- inclusive of the arrears of maintenance, directly to the respondent within a period of three months from the date of receipt of a copy of this order.

10. The civil miscellaneous appeal stands allowed in the above terms. However, there is no order as to costs.

Sd/-

Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

ss

To

1. The Judge
Family Court
Dharmapuri

+2cc to Mr.D.Charles Muthu Shanthan, Advocate SR.No.65212

+1cc to Mr.G.Sumitra, Advocate SR.No.65397

C.M.A.No.255 of 2018

GP(CO)
GN(02/03/2022)