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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 03.03.2021
DATE OF DECISION : 11.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A.Nos.615 of 2018 and 4054 of 2019

Mr.D.Sivakumar ...Appellant in CMA.No.615/18 &
...Respondent in CMA.No.4054/19

Vs

Mrs.Parimala ...Respondent in CMA.No.615/18 &
...Appellant in CMA.No.4054/19

Prayer in C.M.A.No.615/18 : Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984, against the fair and decreetal order passed by the learned IV Additional Family Court Judge, Chennai, in O.P.No.4364/2013, dated 27.12.2017, with regard to ordering payment of monthly maintenance at the rate of Rs.25,000/- per month from the date of filing of O.P.

Prayer in C.M.A.No.4054/19 : Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984, read with Section 28 of Hindu Marriage Act, 1955, against the fair and decreetal order passed by the learned IV Additional Family Court Judge, Chennai, in O.P.No.4364/2013, dated 27.12.2017, insofar as dismissing the prayer seeking divorce on the ground of cruelty and against the dismissal of the prayer seeking permanent alimony.

For Appellant/husband : Mrs.S.Thamizharasi
For Respondent/wife : Mrs.A.Arulmozhi

COMMON JUDGMENT

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

Both husband and wife have filed separate appeals challenging the impugned fair and decreetal order passed by the learned VI Additional Family Court Judge, Chennai, in O.P.No.4364 of 2013, dated 27.12.2017, rejecting the payer for divorce and directing the husband to pay Rs.25,000/- towards monthly maintenance.



2. Mr.D.Sivakumar/husband has filed C.M.A.No.615 of 2018 questioning the grant of monthly maintenance to the tune of Rs.25,000/- per month.

3. Mrs.Parimala/wife has filed C.M.A.No.4054 of 2019 challenging the dismissal of divorce petition filed under Section 13(1)(ia) of the Hindu Marriage Act and also against the dismissal of prayer seeking permanent alimony under Section 25 of the Hindu Marriage Act.

4. Mrs.A.Arulmozhi, learned counsel appearing for the appellant/wife in C.M.A.No.4054 of 2019, submitted that the marriage between the appellant/wife and the respondent/husband was solemnized on 24.04.1996 at Thayar Abooy Thirumana Mandapam, Cheyyar, as per Hindu Rites and Customs. Out of the said wedlock, a female child by name Ojas Sivakumar was born to them on 30.05.1997, and she is now practicing legal profession as a junior lawyer. After living together in Visakapatnam from 09.05.1996 to 26.09.1998, they are now settled in Chennai since 2000. The respondent/husband's parents owned a house in Velachery, Chennai, in which, half of the property i.e. 1000 sq.ft. was purchased by the appellant/wife's father through a registered sale deed dated 10.06.2002. Now, the wife's parents are living in the ground floor and in the first floor of the same house, the husband, child and his mother are living. It is further alleged that the appellant/wife was subjected to physical abuse and cruelty in various methods of neglect, ill-treatment and chiding in front of her minor daughter and mother-in-law, and this apart, she was also subjected to denial of conjugal rights for baseless allegation of having a deviant sexual orientation with her doctor N.Shalini/PW2 to whom the appellant/wife made periodical visit to get treated for the mental depression caused by domestic violence. It is further submitted that the respondent/husband's mother was very abusive and insulted her in many ways and on several occasions, the respondent/husband and his mother used to interfere in her work and tried to prevent her from doing her job. Whenever the appellant/wife complained to her husband about his mother undue interference and mental abuse, it was not taken care of. Moreover, the appellant/wife was not given any financial assistance as she started earning from 2005 onwards and therefore, the appellant/wife also shared the expenses of her daughter.

5. It is further submitted that at one point of time, the respondent/husband made a reckless allegation stating that she was a person of different sexual orientation and he further accused her stating that she is having physical relationship with her women colleagues and thereby, she was being labelled as lesbian etc. The said allegation was denied by the



appellant/wife. In view of continuous ill-treatment, she had preferred a complaint under the Protection of Women from Domestic Violence Act on 02.04.2012 to the Protection Officer, Collectorate, Chennai, and thereafter, the respondent/husband was summoned and he was advised to settle the matter amicably, but, he was not willing to accept any of the demands made by the appellant/wife. Subsequently, in the interest of minor child, the appellant/wife did not proceed with the case further. When a legal notice was issued on 16.06.2012 seeking consent for mutual divorce along with custody of minor child and right of residence, a reply notice dated 28.06.2012 was received stating that he was willing for joint custody of child with a condition that the appellant/wife has to leave the matrimonial home. Since the respondent/husband was not willing for amicable settlement, divorce by mutual consent could not be materialized.

6. Continuing further, it is submitted that learned Family Court, while considering the issue, wrongly dismissed the prayer for divorce, however, it has granted monthly maintenance to a sum of Rs.25,000/- per month from the date of filing petition. Learned Family Court came to the conclusion that the wife has not stated any specific allegation which lead to the filing of petition on the ground of cruelty, but, the fact remains that she suffered with premorbid personality, for which, she has been taking treatment with Dr.Shalini/PW2, who has also submitted a report under Ex.P6 and it indicates that the appellant/wife is suffering with paranoid disorder and the said doctor also spoken about the same in her evidence. But, in the absence of any specific finding that the cruel activity of the respondent/husband is the cause of the appellant/wife's present problem of premorbid personality or it must be the sole or primary cause of the said ailment, it cannot be concluded that her ailment is due to the cruel acts of the respondent/husband, for, in his cross-examination, the respondent/husband specifically stated that the report filed by the Psychiatrist/PW2 is only a summary and not the finding. However, taking note of evidence of Dr.Shalini/PW2, learned Family Court came to the conclusion that the present ailment of the wife is not due to the cruel acts of her husband. The said finding of the learned Family Court cannot be sustained and it is against the material and evidence produced by the PW2, hence, the impugned fair and decreetal order passed by the learned Family Court is liable to be set aside.

7. Per contra, Mrs.S.Thamizharasi, learned counsel for the respondent/husband in C.M.A.No.4054 of 2019, submitted that right from the date of marriage the behaviour of the appellant/wife was abnormal and many times, she was in depression for no reason, however, the respondent/husband did not take the same seriously and in fact, most of the times, she



is more affectionate with female than male including her husband. It is further submitted that she often used to leave to Pondicherry to meet her lady friend known to her in the course of business. When he questioned the same, she said that she needed psychiatric counselling, due to which, he suggested the name of Dr. Shalini/PW2, who is having a clinic at Triplicane. After his suggestion, she took treatment for almost 1 ½ years with PW2 and in the meantime, she developed a sort of affection with the doctor and started visiting her even when it was not necessary. Annoyed with her attitude, PW2 informed him that she is going to stop giving treatment to his wife.

8. Continuing further, she would submit that apart from the above issues, the appellant/wife was having chronic urinary infection and she has been continuously taking treatment for the same, for which, PW2 informed him that for any person with mental stress, this problem tends to crop up and therefore, reducing the mental stress is the only treatment for urinary infection. Denying the allegation that there was no physical relationship between them, it is submitted that she has never done anything to the respondent/husband as a dutiful wife and even the food is cooked separately by her and the respondent/husband used to cook food for himself and daughter.

9. Stoutly denying the allegation that there was no conjugal relationship between them, learned counsel would submit that whenever she was physically normal, on the advice of Psychiatric Doctor, there was a sexual relationship between them. Besides, terming the allegation of dubbing the appellant/wife as lesbian as totally false, learned counsel submitted that the respondent/husband never spoke about her character in such a cheap manner and if such allegation is true, he would not have taken her to the psychiatric for treatment. On the other hand, as per the advice of the doctor, the respondent/husband was giving special care to his wife considering the treatment she was undergoing for Premorbid personality. Therefore, the petition for divorce filed by her on the ill-advice of her parents with false allegations is liable to be dismissed.

10. With regard to grant of interim maintenance despite the dismissal of divorce petition, learned counsel relying on a decision of the Hon'ble Apex Court in the case of Chand Dhawan Vs. Jawaharlal Dhawan [(1993) 3 SCC 406] submitted that if the petition for divorce fails, then no decree is passed, i.e., the decree is denied to the applicant and therefore alimony cannot be granted in a case where a decree is refused because in such a case the marriage subsists. Therefore, in the case on hand, the grant of interim maintenance at the rate of Rs.25,000/- per month in spite of rejecting the prayer for divorce is liable to be set aside.



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14. Coming to other allegation that when both parties are living in the same house, namely, appellant/wife is living in the ground floor and the respondent/husband is living in the first floor along with her daughter who is regularly visiting the appellant/wife, as concluded by the learned Family Court, neither the mother nor the father of the appellant/wife nor her family members came to the witness box to give evidence in support her allegation. Therefore, when the appellant/wife comes to the Court seeking divorce on various allegations of cruelty, it is not known how her own parents and daughter decline to speak in support of her allegations, that show that her allegations are baseless.

15. Thirdly, when the appellant/wife has specifically alleged that she was called as insane in the presence of minor daughter and also her husband/respondent ill-spoke about her character which caused aspersion to the minor daughter, to substantiate such allegation, she either opted to examine her minor daughter or her parents, therefore, we are unable to accept the mere allegation made by her when it was specifically denied by the respondent/husband.

16. Fourthly, Dr.N.Shalini/PW2 also submitted her report under Ex.P6. Relevant portion of the same as discussed by the learned trial Court is extracted below:-

"10..... On perusal of Ex.P6, PW2, the doctor has opined that the petitioner is suffering with paranoid disorder and also spoken about the same in her evidence.

11. PREMORBID PERSONALITY: What is it?

Premorbid personality refers to patterns of thinking interpreting, and understanding oneself relative to the environment. Premorbid personality traits existing prior to illness or injury. There is evidence that lifelong personality traits persist even after traumatic brain injury.

PW2, has observed in her report under Ex.P6, about the petitioner at page 7 under caption "PREMORBID PERSONALITY" as follows:

Parimala had been an out going and sociable person from childhood. She used to visit friends and mingle with children of her neighbourhood. She had been studious, hard working and intelligent. She raised in a Hindu family, but has a more secular mend of mind. Although raised in a traditional household, with a working father and a home-maker mother, Parimala has gradually moved



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into a more progressive mindset. During the years of separation from her husband, she has learnt to fend for herself; but she still appears inhibited, unable to assert herself with her husband and his family of origin."

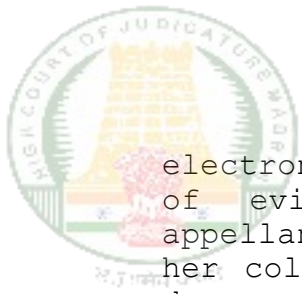
12..... The doctor has opined about the presenting problems of the petitioner as follows:-

PRESENTING PROBLEMS:

Mrs.Parimala first reported for consultation on 8th DEC 2009. Her complaints at this visit were intense feeling of sadness, disturbed sleep, inner restlessness, increased appetite and weight gain, frequent recall of past bitter events in the family, conflicts with her husband and his family of origin. These symptoms have been showing up on and off, but in the recent past, she has been increasingly depressed and felt very neglected by her husband. To take a break, she went to Pondicherry, to meet a lady friend, who had been a source of solace. But her husband felt this behavior was abnormal and they had arguments over this. This precipitated another quarrel following which the client had decided to take a psychiatric consultation."

As could be seen from the report/Ex.P6 submitted by the PW2, it is clear that no oral or documentary evidence has been produced by the appellant/wife to show that her husband/respondent has caused any cruelty to her. Hence, we are unable to disagree with the findings of the learned Family Court refusing to grant divorce. Even the other allegation that the respondent/husband indulged in constant surveillance of her device, mail communications without her knowledge also could not be established, for, to substantiate the said allegation, she did not produce any evidence particularly any electronic evidence. Moreover, when the appellant/wife made an allegation that her husband/respondent had hacked her mail ID, the same was not established through electronic evidence or through the persons working in her business circles, hence, the said allegation cannot be sustained.

17. This apart, Ex.R2/income tax filed by the appellant/wife shows that the company by name Lexworkz Data Services Private Limited was run by the appellant/wife and in the said Company, she was working as Managing Director, and the respondent/husband and the appellant's father were working as Directors. When the company was running with three Directors including her husband and her father, the allegation of hacking her emails and other



electronic devices has not been established by adducing any iota of evidence. Therefore, looking at the case of the appellant/wife, when her own daughter and father and mother and her colleagues working in her concern have not come forward to depose in her favour to say that the respondent/husband has caused mental cruelty, we are not inclined to accept the case of the appellant/wife as no case has been made out to invoke Section 13(1)(ia) of the Hindu Marriage Act to dissolve the marriage.

18. Coming to the direction to pay Rs.25,000/- towards monthly maintenance to the appellant/wife, that too, from the date of petition i.e. 21.11.2013, in our considered view, the same does not sound good. In this context, it is relevant to refer to Section 25 of the Hindu Marriage Act, which is extracted hereunder:-

25. PERMANENT ALIMONY AND MAINTENANCE--

(1) Any court exercising jurisdiction under this Act may, at the time of passing any decree or at any time subsequent thereto, on application made to it for purpose by either the wife or the husband, as the case may be, order that the respondent shall pay to the applicant for her or his maintenance and support such cross sum or such monthly or periodical sum for a term not exceeding the life of the applicant as, having regard to the respondent's own income and other property, if any, the income and other property of the applicant, the conduct of the parties and other circumstances of the case, it may seem to the court to be just, and any such payment may be secured, if necessary, by a charge on the immovable property of the respondent.

(2) If the court is satisfied that there is a change in the circumstances of either party at any time after it has made an order under sub-section (1), it may at the instance of either party, vary, modify or rescind any such order in such manner as the court may deem just.

(3) If the court is satisfied that the party in whose favour an order has been made under this section has remarried or, if such party is the wife, that she has not remained chaste, or, if such party is the husband, that he has had sexual intercourse with any woman outside wedlock, it may at the instance of the other party vary, modify or rescind



any such order in such manner as the court may deem just.

Permanent alimony and maintenance are contemplated if the Court is satisfied that there is a just and reasonable cause for payment of permanent alimony and maintenance. However, an order for permanent alimony or maintenance in favour of the wife or the husband could only be made when a decree is passed granting any substantive relief and not where the main petition itself is dismissed or withdrawn. In the present case, since the learned Family Court has rejected the prayer for divorce, granting of relief for permanent alimony cannot hold good.

19. It is well settled legal position that permanent alimony or maintenance to wife under Section 25 of the Hindu Marriage Act cannot be granted if the petition for divorce between the parties is dismissed (A reference can be had from a decision of Madhya Pradesh High Court in Badri Prasad Vs. Smt. Urmila Mahobiya [AIR 2001 Madhya Pradesh 106])

20. Similarly, our High Court in Ranganatham Vs. Shyamala [AIR 1990 Madras 1], placing reliance on a decision of the Delhi High Court in Smt. Sushma Vs. Satish Chandra [AIR 1984 Delhi 1] holding that alimony cannot be granted in a case where a decree for divorce or other decree is refused as marriage in such a case subsists, held thus:-

"5.....For the discussions already made, I have no hesitation in holding that the existence of any of the decrees referred to in Ss. 9 to 13 of the Act is a condition precedent to the exercise of the jurisdiction under S.25(1) of the Act, and the granting the ancillary relief for permanent alimony and maintenance and not when the main petition was dismissed and no substantial relief was granted under Ss. 9 to 14 of the Act. Since there was no 'passing of decree' as contemplated under S. 25(1) of the Act, the jurisdiction to pass an order for maintenance under that section does not arise."

21. Besides, in a similar circumstances, the Hon'ble Apex Court in Chand Dhawan's case (cited supra) by referring to various decisions of the High Courts held thus:-

7. A Division Bench of the Gujarat High Court in Kadia Harilal Purshottam v. Kadia Lilavati Gokaldas AIR [1961] Gujarat 202; ruled that the words "at the time of passing any



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decree or any time subsequent thereto" occurring in section 25 meant passing of any decrees of the kind referred to in the earlier provisions of the Act and not at the time of dismissing the petition for any relief provided in those sections, or any time subsequent thereto. It was viewed that the expression "any decree" did not include an order of dismissal and that the passing of an order of dismissal of the petition could not be regarded as the passing of decree within the meaning of section 25. On that view a petition for permanent alimony preferred by the wife was dismissed when the petition of the husband for restitution of conjugal rights had been dismissed.

8. In Shantaram Gopalshet Narkar v. Hirabai, AIR [1962] Bombay 27 Vol. 49, a learned Single Judge of the Bombay High Court took the view that in order to confer jurisdiction upon the court to proceed under section 25(1) there must be a decree as contemplated under the Hindu Marriage Act and one of the decrees can be under section 10(1) (B). And when the petition was allowed to be withdrawn, there was no decree passed in favour of the husband, and if there was no decree, the court had no jurisdiction to pass any order granting permanent alimony to the wife under section 25(1).

9. In Minarani Majumdar v. Dasarath Majumdar AIR [1963] Calcutta 428 Vol. 50, a Division Bench of the Calcutta High Court ruled that an order dismissing a petition by the husband for divorce under section 13 is not a decree within the meaning of section 25 and as such when no substantive relief is granted under sections 9 to 14, there is no passing of a decree as contemplated by section 25 and hence no jurisdiction to make an order for maintenance under the said section. Harilal's case (supra) of the Gujarat High Court was noticed and relied upon.

10. A learned Single Judge of the Bombay High Court in Shantaram Dinkar Karnik v. Malti Shantaram Karnik, AIR [1964] Bombay 83 - vol. 51 relying on the earlier decision of that



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court in Shantaram Gopalshet's case (supra) and kadia Hiralal's case (supra) reaffirmed the view that the expression "passing of any decree" only referred to passing of any decrees provided for in section 9 to 13 of the Act, even though technically speaking dismissal of a suit or a petition may be called a decree but not for the purpose of section 25 conferring jurisdiction on the Matrimonial Court to grant permanent alimony.

11. A Division Bench of the Orissa High Court in Akasam Chinna Babu v. Akasam Parbati & Another AIR [1967] Orissa 163 - Vol. 54 denied the relief of permanent alimony when the petition for divorce of the husband had been dismissed. The views of the Bombay High Court and the Gujarat High Court above referred to were taken in aid to get to that view.

12. A three-Judge full bench of the Punjab and Haryana High Court in Durga as v. Smt. Tara Rani, AIR (1971) Punjab and Haryana 141 - Vol. 58, in a different context, while determining the question whether a party to a decree or divorce could apply for maintenance under sub-section (1) of section 25 of the Act after which decree has been granted, ruled that the proceedings for grant of permanent alimony were incidental to the main proceeding and as such an application for alimony could be made even after the grant of the decree for divorce.

13. A learned Single Judge of that Court, however, in Gurcharan Kaur v. Ram chand AIR 1979 Punjab and Haryana 206 Vol. 66 even while relying, on the full bench decision afore-referred went on to deny permanent alimony to the wife whose claim for decree of Nullity of Marriage stood dismissed and on that basis the petition for alimony was held not maintainable.

14. In Darshan Singh vs. Mst. Daso AIR 1980 Rajasthan 102 - Vol. 67 a learned single Judge of the Rajasthan High Court made a distinction between the expression "passing any decree" occurring in section 25 and the expression "decree made" under section 28. He viewed that the former expression meant granting any relief of the nature stated in sections 9 to 13 while the later meant granting or



refusing the relief. In other words, it meant that passing of any decree as to mean granting any relief, and the making of any decree was to mean granting or refusing any relief.

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15. A Division Bench of the Delhi High court too in Smt. Sushma v. Shri Satish Chander AIR 1984 Delhi 1 Vol. 71 taking stock of the above-referred to views of the Rajasthan, Orissa, Bombay, Calcutta and Gujarat High Courts affirmably took the view that the passing of the decree in section 25 meant the passing of a decree of divorce, Nullity, Restitution of Conjugal Rights or Judicial Separation and not the passing of a decree dismissing the petition. It was further held that if the petition fails then no decree is passed, i.e., the decree is denied to the applicant and therefore alimony cannot be granted in a case where a decree is refused because in such a case the marriage subsists. The word "decree" in matrimonial cases was held to have been used in a special sense different from that in which it is used in the Civil Procedure Code.

23..... In other words without the marital status being affected or disrupted by the matrimonial court under the Hindu Marriage Act the claim of permanent alimony was not to be valid as ancillary or incidental to such affectation or disruption....."

From the aforesaid various decisions, it is crystal clear that when a petition for divorce is dismissed, alimony or maintenance cannot be granted where a decree for divorce is refused, for, in such a case, approach of any Court granting alimony or maintenance to the wife, after refusing divorce, will encourage bad thoughts and negativity, that will heavily impact even on the ideal family, therefore, the Court of law shall not allow any such possibility. The Courts are established to promote peace and harmony, hence, the Courts shall unite the separated couple but not to separate them from the matrimonial bond. In the case on hand, although learned Family Court has rightly refused to grant the relief of divorce under Section 13(1)(ia) of the Act, it has erred in granting the relief of maintenance at the rate of Rs.25,000/- per month.

22. Thus, for the reasons stated above, impugned fair and decreetal order passed by the learned Family Court in respect of granting maintenance is set aside, however, the order of refusing to grant divorce is confirmed. Consequently, C.M.A.No.615 of 2018 filed by the husband is allowed and



C.M.A.No.4054 of 2019 filed by the wife is dismissed. It is seen from the docket sheet that this Court, vide order dated 02.04.2018, while granting the interim stay, directed the husband to deposit a sum of Rs.5,00,000/- towards arrears of maintenance to the credit of O.P.No.4364 of 2013 on the file of IV Additional Family Court, Chennai. Mrs.A.Arulmozhi, learned counsel for the wife, stated that the wife has already withdrawn the said amount. Therefore, needless to state that the said amount need not be collected back by the husband. No Costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. IV Additional Family Court Judge,
Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.

+1 CC to M/s. A. Arulmozhi, Advocate, Sr. 27992.
+1 CC to M/s. R. Mayasundari, Advocate, Sr. 27700.

C.M.A.Nos.615 of 2018 and
4054 of 2019

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