



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.03.2021

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.M.S.A.No.29 of 2019
C.M.P.No.21116 of 2019

Dr.G.Mythili

.. Appellant

vs.

Dr.V.Paari

.. Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 13(1) (I.A) of CPC r/w Section 100 of C.P.C (Order XLII Rule 1 of C.P.C) against the decree and judgment in H.M.C.M.A.No.04 of 2018 dated 26.06.2019 on the file of the Mahila Court (Sessions Court), Vellore by confirming the decree and judgment in H.M.O.P.No.61 of 2013 dated 27.03.2018 on the file of the Sub-Court, Ranipet, Vellore District.

For Appellants

: Mr.N.R.Elango

Senior Counsel

for Mr.K.G.Senthil Kumar

For Respondent

: M/s.Jayakumari

J U D G M E N T

The judgment and decree dated 26.06.2019 passed in H.M.C.M.A.No.4 of 2018 confirming the judgment and decree dated 27.03.2018 passed in H.M.O.P.No.61 of 2013 is under challenge in the present Civil Miscellaneous Second Appeal.

2. The facts in nutshell are that the marriage between the petitioner and the respondent was solemnized on 03.09.2008. The respondent/husband made a complaint against the appellant's family members on 29.05.2010 to the Inspector of Police, Sholinghur and the Hon'ble Chief Minister as well as to the District and State Police Officials. On 02.06.2010, the respondent/husband filed a petition before the Sub-Court, Tiruvallur under Section 12 of the Hindu Marriage Act to declare the marriage as null and void. On 10.01.2012, the petition filed by the respondent/husband was transferred by the learned Principal District Judge, Tiruvallur to the Sub-Court, Tiruttani



on administrative grounds. On 30.01.2013, the petition filed by the respondent/husband was transferred to the Sub-Court, Ranipet by the order of this Court in Tr.CM.P.No.521 of 2012. An interlocutory application was filed by the appellant/wife on 14.03.2016 challenging the maintainability of the petition for divorce and the said petition was dismissed by the Sub-Court as the petition was filed after more than one year from the discovery of fraud allegedly committed by the appellant/wife. Again on 17.06.2013, further complaint was filed by the respondent against the appellant's family members to the Hon'ble Chief Minister.

3. On 01.03.2017, a revision petition was filed by the appellant/wife in C.R.P(PD).No.1647 of 2016 which was disposed of by this Court granting leave to the respondent/husband to convert section 12 of the Hindu Marriage Act into Section 13 of the Hindu Marriage Act by making amendments within two weeks from the receipt of the order. On 18.09.2017, the Hon'ble High Court extended the time for carrying out the amendments in C.M.P.No.10304 of 2017 filed by the respondent. The amendments were carried out on 20.10.2017 and the said amendments were allowed by the Sub-Court, adding five new paragraphs to the petition and by creating a new cause of action. On 27.03.2018, a decree of divorce was granted by the learned Sub-Court and the prayer for restitution of conjugal rights made by the appellant/wife was dismissed with a finding that the medical records given by the respondent were not proved by him. However, the pendency of S.C.No.184 of 2017 on the complaint of the appellant against the respondent constituted cruelty for dowry harassment. On 14.09.2018, the learned Mahila Court (Fast Track) Vellore, allowed the petition filed under Section 321 Cr.P.C after appellant filed affidavit consenting to withdrawal of prosecution as the appellant/wife wanted to rejoin with the respondent in life. On 11.06.2019, the learned Mahila Court (Fast Track) Vellore, confirmed the decree of divorce on the ground that the medical reasons were not proved by the respondent/husband but however there was irretrievably break down of the marriage citing the separation of spouses since the year 2010 and the erstwhile criminal proceedings.

4. With these facts and circumstances, the appellant/wife raised the substantial question of law which reads as under:

1. Whether the appellate Court granting divorce on the ground of Section 13(1)(i-a) of the Hindu Marriage Act, 1955 is valid?

2. Whether the application was hit by the principles of Resjudicata as per the averments in the application?

3. Whether the pendency of criminal case can be termed as cruelty as per the definition under Section 13 (1)(i-a) of the Hindu Marriage Act 1955?



4. Whether the application for Restitution of Conjugal Right can be rejected on the ground of delay?

5. Whether the Court can rely on the failed mediation report and also made reference on the same?

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5. The learned Senior Counsel sterroneously contended that both the trial Court as well as the first Appellate Court have erred in arriving a conclusion that a decree of divorce can be granted merely on the ground that the marriage became irretrievably broken down. It is further contended that mere filing of a criminal case whether would amount to a cruelty within the meaning of Section 13(1)(i-a) of the Hindu Marriage Act, 1955. Further, it is argued that the petition for restitution cannot be rejected on the ground of delay.

6. The learned Senior Counsel is of the opinion that the findings of the trial Court as well as the First Appellate Court are uniform in this aspect and both the Courts have not considered the basic principles to be adopted in such circumstances. In this regard, the judgment of the Hon'ble Supreme Court of India in the case of MANGAYAKARASI vs.M.YUVARAJ reported in 2020 3SCC 786 is relied upon. In paragraph No.15 of the judgment, the Apex Court held that the marriage has become irretrievably broken down alone cannot be a ground to grant dissolution of marriage. The Court further observed that "in the instant facts, having given our thoughtful consideration to that aspect we notice that the parties hail from a conservative background where divorce is considered a taboo and further, they have a female child born on 03.01.2007 who is presently aged about 13 years. In a matter where the differences between the parties are not of such magnitude and is in the nature of the usual wear and tear of marital life, the future of the child and her marital prospects are also to be kept in view, and in such circumstance the dissolution of marriage merely because they have been litigating and they have been residing separately for quite some time would not be justified in the present facts, more particularly when the restitution of conjugal rights was also considered simultaneously". The learned counsel appearing for the appellant relying on the above judgment, made a submission that both the Courts have not considered the factual aspects in right perspective and rejected the petition for restitution and allowed the petition granting dissolution of marriage. The family of the appellant is also from a conservative background and further, the appellant filed a petition for restitution. Therefore, the Courts would have provided an opportunity to the parties to resume the matrimonial home instead the Courts have granted decree of divorce. Thus, the judgment and decree passed by the Trial Court as well as the First Appellate Court are liable to be set aside.

7. The learned counsel appearing for the respondent made a



submission that the family of the appellant is an affluent family and having political background. Initially, the appellant filed a petition to declare the marriage as null and void. Subsequently, it was amended consequent to the order passed by this Court in C.R.P(PD).No.1647 of 2016 dated 01.03.2017. The respondent could not be able to establish the cruelty through various circumstances and the mental agony undergone by him. Therefore, the Courts have rightly considered the material evidence placed by the respondent and considering the fact that the marriage became irretrievably broken down, the decree of divorce was granted.

8. Let us now consider the allegations raised against the appellant/wife by the respondent/husband. Admittedly, both are doctors. The appellant/wife is the daughter of Thiru.C.Gopal, who is the Ex-member of Parliament and Ex-member of Legislative Assembly. The marriage between the appellant and the respondent was an arranged marriage. The respondent/husband had completed his M.D Course and the appellant/wife is a Dental Doctor by profession and completed her B.D.S Course. The respondent was working as a Civil Assistant Surgeon at the Government General Hospital. He was running a clinic in his father's property at Sholinghur.

9. In the divorce petition, the respondent/husband raised an allegation that during the date of first night, the respondent/husband came to know that before the marriage, the appellant/wife had undergone a major operation but the same was not disclosed to the respondent either by the appellant/wife or her parents. The respondent/husband came to know that she got the following features:-

- a. Operated scar over left side abdomen measuring about 12 cm.
- b. Absence of secondary sexual features.
- c. Amenorrhea-absence of menstrual cycle.
- d. Absence of uterus.

10. The above said features are correlates with testicular feminine syndrome. After knowing the above, the respondent asked the appellant/wife about the operation but she was silent. The respondent also demanded the appellant to give the medical certificate about the operation which was also not revealed properly. The respondent/husband every day demanded the medical certificate from the appellant/wife and she used to telephone to her parents and brothers, who in turn, all of them were came to his residence and clinic and by locking the doors and threatening the respondent/husband and attacked him. This was happened on several days since he could not be able to make any complaint against the appellant/wife and her family members as the appellant's father is a popular politician and belongs to



powerful political party. The appellant father also was a former member of Parliament and a member of legislative assembly. Whenever the respondent/husband made an attempt to give complaint, the appellant's father instigated his sons, who are the Advocates, restrained him with heavy threatening not to give any complaint and in the event of filing any complaint, the respondent has to face serious consequences. On 12.04.2010, on the instigation of the appellant, her father and brothers brought about 50 rowdy elements to the respondent's clinic and severely attacked him and his brother/Mr.Velu in the road which was witnessed by the public and the patients but none of the public came for their rescue since the appellant's father and brothers are influenced persons. The appellant's brother namely Thiru.Parthiban and Thiru.Tamil Selvan are Advocates by profession. Therefore, the respondent/husband could not able to initiate any action directly or indirectly. The threatenings on various circumstances were narrated by the respondent/husband in his petition. Thereafter, the complaint was lodged before the All Women Police Station and a dowry harassment and physical abuse was also filed against the respondent under the Tamil Nadu Prohibition of Women Harassment Act. The respondent/husband was forced to face all these consequences immediately after the date of marriage.

11. The appellant/wife denied all such allegations. The appellant contested the case by stating that on account of certain instigation, actions were initiated against the respondent by filing a police complaint and she expressed his willingness for re-union. However, it is contended that the Courts have not considered the submission made in this regard. The Trial Court adjudicated the issues with reference to the documents and evidence. The pleadings were elaborately considered by the trial Court. The Trial Court made a finding that the respondent/husband was not able to concentrate in his Doctor profession and spending his valuable time in legal battle at various courts, based on the false criminal complaint case was registered by the All Women Police Station and the case is pending before the Mahila Court in [S.C.No.184](#) of 2017. Thus, the above acts of the appellant amounts to mental and physical cruelty on her part and had lead to such a situation that it is impossible for the respondent to lead his normal matrimonial life.

12. The trial Court, relying on the judgment, made an observation that the appellant/wife has filed a complaint against the respondent and his family members under Section 498 (A) of DP Act and the respondent's sister was also arrested and put behind the bar for more than 21 days and lost her teacher post. The respondent and his family members were attacked and threatened by the appellant's family members. Even the appellant block the Anticipatory Bail application filed by the respondent

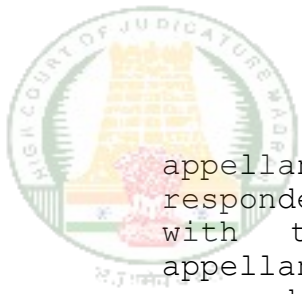


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and his family members by filing intervenor application thereby causing mental agony, torture and harassment to the respondent and his family members which amount to cruelty. Thus, the respondent/husband proved by way of oral and documentary evidence that the appellant caused mental cruelty to the respondent/husband". In this regard, the appellant also contended that the respondent/husband filed a false complaint against her and her family members. In order to protect her and her family members, she has given a complaint against the respondent for dowry harassment and cruelty. Otherwise, it is contended that the complaint filed by the appellant/wife is a counter complaint filed by the respondent/husband. Therefore, the trial Court formed an opinion that the false complaint against the respondent/husband created a mental agony.

13. Regarding the restitution of conjugal rights, the trial Court formed an opinion that the appellant has put the condition to withdraw the complaint and case against the respondent and his family members only when the respondent is willing to withdraw this divorce petition and live with her which is again putting mental agony and pressure on the respondent. There was no consensus in real sense and even for restitution, conditions were imposed. Considering the fact that the appellant/wife has not produced her medical documents and even on the date of first night, the respondent/husband found that she had undergone some surgeries, the trial Court granted the decree of divorce. The appellant filed an appeal against the judgment of the trial Court. The First Appellate Court also elaborately adjudicated the grounds raised by the appellant/wife. The First Appellate Court, while concurring with the judgment of the trial Court, formed an opinion that they were living separately for more than 10 years and right from the date of marriage, the dispute existed between the spouses. Various instances and circumstances established also shown that there is no possibility of re-union and accordingly, held that the petition for restitution filed by the appellant deserves no merit consideration. Admittedly, there is no child and right from the date of marriage, the appellant and the respondent developed a misunderstanding and there from the issues started. Now, for the past about 11 years, the appellant and the respondent are living separately. Considering all these facts and circumstances, the First Appellate Court also dismissed the appeal by confirming the judgment and decree.

14. As far as the substantial question of law is concerned, the divorce was not only granted merely on the ground of the pendency of the criminal proceedings. The dissolution of marriage was granted both by the trial Court and by the First Appellate Court based on other facts and circumstances established. For instance, medical records sought for by the respondent/husband were not produced by the appellant/wife. The major operation was not disclosed, more specifically, when the



appellant and the respondent are the Doctors. Therefore, the respondent could not able to lead a peaceful matrimonial life with the appellant/wife. Frequent threatenings from the appellant's family members also caused mental agony to the respondent/husband. It was established that the family members of the appellant are powerful and capable of threatening the respondent/husband. Various instances are narrated which were established and such instances were unable to be rebutted by the appellant/wife before the trial Court as well as before the First Appellate Court. Thus, the Courts have not granted divorce merely on the ground that a complaint was filed.

15. As rightly pointed out by the learned Senior Counsel, mere filing of a criminal complaint cannot be a ground to grant dissolution of marriage and the allegations of cruelty are to be established independently. In the present case, the respondent/husband has independently established the allegation of cruelty and therefore, there is no infirmity with reference to the findings of the Court. The restitution of conjugal petition was rejected with a clear finding that the parties were living separately for more than 10 years. When there is no scope for resumption of matrimonial home, the Courts have rejected the petition. Therefore, this Court is of the opinion that the substantial question of law raised were already answered by the trial Court as well as by the First Appellate Court and those legal points were also considered and the judgments were delivered. The Courts have considered the cruelty independently with reference to the allegations as well as the materials produced by the parties. This being the factum, the substantial question of law deserves no merit consideration. Such substantial questions of law were dealt with by the trial Court as well as the First Appellate Court and there is no infirmity or perversity as such.

16. In short, the marriage was solemnized in the year 2008 and the appellant and the respondent are the Doctors. The difference of opinion arouse on the date of marriage, more specifically, during the first night and the respondent/husband found that the appellant/wife undergone major operation and he asked her to produce the medical records which she refuses to do so. Thereafter, the respondent/husband repeatedly asked her to produce the medical records which created the issues and the family members of the appellant also contributed for development of difference of opinion. Under these circumstances, the complaints were filed mutually and they are living separately for about 11 years and there is no child. In the judgment of the Hon'ble Supreme Court of India referred by the appellant, the facts are entirely different and the Hon'ble Apex Court found that the child was aged about 13 years and the differences between the parties are not of such magnitude. Taking note of the fact that the difference of opinion between the parties are



not serious, the Apex Court rejected the dissolution of marriage. However, in the present case, the magnitude of the allegations are serious and certain medical grounds were taken by the respondent/husband which were not answered by the appellant/wife before the Courts and the frequent allegations of threatening were also established by the respondent as the family members of the appellant are powerful politician.

17. Considering all these facts, the Trial Court as well as the First Appellate Court granted the decree of divorce. This Court do not find any acceptable question of law so as to interfere with the findings. Accordingly, the judgment and decree dated 26.06.2019 passed in H.M.C.M.A.No.4 of 2018 confirming the judgment and decree dated 27.03.2018 passed in H.M.O.P.No.61 of 2013 stands confirmed and consequently, the Civil Miscellaneous Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS III)

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Sub Assistant Registrar

ssb

To

- 1.The Mahila Court(Sessions Court), Vellore
- 2.The Sub-ordinate Judge,
Sub-Court, Ranipet, Vellore District.

+1 cc to Mr.K.G.Senthil Kumar, Advocate Sr.NO.19457

+1 cc to Mr.S.Jayakumari, Advocate Sr.NO. 193031

C.M.S.A.No.29 of 2019

SS(CO)

A.SK(29.10.2021)