



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 11.12.2020

DATE ON WHICH PRONOUNCED : 06.01.2021

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

C.M.A(MD) No.20 of 2011

and

MP(MD)No.1 of 2011

S.Jasmine Ebenezer ... Appellant/1st Respondent

vs.

1.A.John Isacc Isravel ... 1st Respondent/ Petitioner

2.Manickam ... 2nd Respondent / 2nd Respondent

(The Second Respondent is ex-parte before the trial court and hence he is given up in this appeal)

Prayer: Civil Miscellaneous Appeal filed under Section 32 of Indian Divorce Act, against the judgment and decree dated 15.06.2010 passed in I.D.O.P.No.57 of 2007 on the file of the Principal District Judge, Thoothukudi.

For Appellant : Mr.C.Dhanaseelan

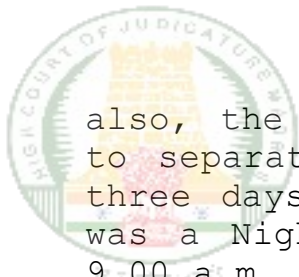
For R1 : Mrs.P.Jessi Jeeva Priya

For R2 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the judgment and decree, dated 15.06.2010 passed in I.D.O.P.No.57 of 2007 on the file of the Principal District Judge, Thoothukudi.

2.The case of the appellant before the Tribunal is that the marriage between the parties was performed as per their religious customs on 29.05.1986. Three daughters were born to them. On the very first date of marriage, the first respondent, who is the wife heckled the family of the petitioner and on the second day of the marriage, they went to the first respondent's parental home. There



also, the petitioner was illtreated and compelled the petitioner to separate from the family and live with her alone. So, after three days, the petitioner rented a house at Nazareth. Since he was a Night Watchman, he attended his duty between 6.00 p.m to 9.00 a.m. During those time, the first respondent was not prepared to do any service to her husband as a wife and she was also not inclined to have the marital relationship. During the absence of the petitioner, it came to notice that some known persons from Arumuganeri and the husband of the first respondent's sister used to visit their house and this lead to some talk about the fidelity of the first respondent by the villagers. When it was questioned by the petitioner, she threatened him.

3. When they were living in Nazareth, the second respondent was only 15 years old boy. He used to frequent them. Even in the village residence, the second respondent used to come to the house. In those time, he used to spent his day time in the first respondent's house and also indulged in sexual activities. When this came to the notice of the petitioner, he questioned the same., which resulted in the first respondent lodging a complaint against the petitioner with false ground. In the month of December 2005, the brothers and sisters of the petitioner visited the village and then only, they came to know about the relationship between the first and second respondents. In spite of advise given by the relatives of the petitioner, the first respondent did not hear the same. In the month of June 2006, she gave a complaint against the petitioner before the Tirunelveli All Women Police Station. The efforts made by the petitioner for joint living did not yield any result. So, citing these reasons, the petition is filed by the petitioner for divorce. The second respondent remained *exparte* and the first respondent contended that he studied only upto 12th standard and the allegation that he did not perform the duties of wife and abusing the petitioner in bad words all are denied. It was also denied that the first respondent did not co-operate in the marital relationship. The alleged advise given by the petitioner and his relatives in the month of December 2005 is also denied.

4. Only at the instance of the petitioner, arrangement was made for separate living in Nazareth. When they were living at Prakasapuram, the second respondent was only of the age of 8 and was a neighbour. Even from childhood, he used to visit the family and become one among them. The parties did not have any male issue, the petitioner and the first respondent treated him as their son for all purpose and the second respondent used to help the parties in the domestic affairs. When the petitioner was hospitalised in 2000, the second respondent was assisting him. In the year 2005, the second respondent stood as a guarantor for a loan obtained by the petitioner. As he was treated as a member of



the family, he participated in all the functions. The first respondent treated the second respondent only as if her son.

5. The petitioner developed some illegal intimacy with one Mariam. On a particular day, the first respondent visited the house of Mariam and she found that the petitioner and the Mariam are in a compromising situation. When the petitioner has recovered from illness, he compelled the first respondent to give consent for him to marry the said Mariam as a second wife and that was not agreed by the first respondent. So, difference arose between them and also prayed to dismiss the petition.

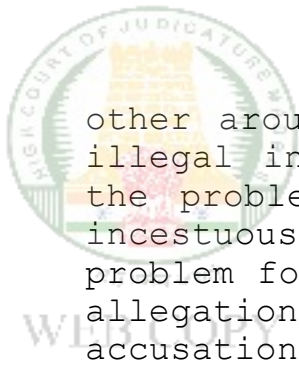
6. On the side of the petitioner, he was examined as P.W.1 and one document marked. On the side of the first respondent one witness was examined and twelve documents marked.

7. At the conclusion of the enquiry, the Court came to the conclusion that the plea of adultery is not proved. But, granted a decree for divorce on the ground of mental cruelty by observing that when serious allegations of adultery has been made by the husband against the wife with second respondent, her act of giving her first daughter in marriage to the second respondent are against the cultural, marital and societal norms; So, this amounts to continuous acts of cruelty; apart from that, bitterness arose between the parties due to the contact of the first respondent.

8. The correctness of these findings are called in question in this appeal by the wife. Since the plea of adultery has been held to be not proved, this Court need not discuss much about this allegation. So, this appeal is confined only to the findings recorded by the Trial Court as noted above.

9. For better appreciation of case, the sequence of events which let to the filing of the petition is required to be borne in mind. The marriage between the parties took place on 29.05.1986. They lived happily and begot three daughters. The difference of opinion arose between them in and around 2005 - 2006 and started living separately from August 2006. Till today no co-habitation resumed. Even the attempt on the part of this Court to make a conciliation between the parties did not yield any result. So, as things stand today, they are living separately from 2006. The respondent herein, who is the husband is trying to make a strong case for granting divorce due to the separate living from 2006 onwards and this Court will discuss this point in the later part of the judgment.

10. Actually, what had happened in the year 2006, except the oral evidence of the parties, no direct or indirect evidence is available. It appears that they started mud slinging upon each

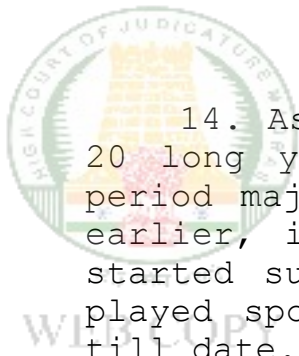


other around this time. The wife says that the husband developed illegal intimacy with one Mariam and that was the root cause of the problem. According to the husband, the wife was in illicit incestuous relationship with the second respondent and that is the problem for separate living. As observed by the Trial Court, these allegations are nothing, but, only allegations. Both the accusations have been disbelieved by the Trial Court stating that they are baseless. I find that the findings of the Trial Court on this aspect is perfectly fair in the circumstances of the case.

11. After the separate living, the petition was filed by the husband in the year 2007. The Trial Court has taken up the case on 03.02.2009. The husband filed chief in affidavit and the matter was adjourned for cross examination. When that was pending, the marriage between the second respondent and the first daughter of the parties was arranged by the appellant/wife, which was also performed on 22.06.2009. After this marriage, P.W.1 was cross examined by the wife and at that time, the appellant/wife contended that the marriage was performed as per the Christian Marriage Act in the church and inspite of publication, there was no objection by the petitioner. According to the appellant/wife, the performance of the marriage and proposal was also informed to the petitioner. But, he refused to give any consent. This is the evidence of R.W.1 during the cross examination. So, this aspect has been taken note by the Trial Court for coming to a conclusion that his act amounts to cruelty that too continuous cruelty which was committed by the appellant/wife against the morality of culture, social and marital relationship. In the facts and circumstances of the case, **whether the act of wife is proper?** is the next question which got to be answered.

12. The Trial Court passed an order granting divorce on 15.06.2010. An appeal was also preferred immediately against the decree of divorce. As mentioned earlier, an effort was made by this Court, directing the parties, to appear before the chamber of the Hon'ble Judge of this Court. But, later, there was no compromise between the parties. So, this is the sequence of events.

13. The present position of the parties as per the information furnished by the learned counsel for the appellant/wife is that the first daughter as mentioned earlier was married to the second respondent and second daughter was also given in marriage and third daughter is to be married and all these days, by her own income, the appellant/wife educated and performed the marriage of the children without help of the husband. Even now, atleast for the sake of the children compromise for joint living was advised. But as mentioned earlier, that was not successful.



14. As mentioned earlier, they lived without any problems for 20 long years. No evidence on record to show that during this period major marital problem arose between them. So as mentioned earlier, it all started only in the year 2006, when the parties started suspecting each other's fidelity. Baseless suspicion has played spoil sport in their marital life from the year 2006 to till date.

15. So, the question which arise for consideration is **whether this long separation is enough to grant a decree of divorce?** The respondent / husband would rely upon the judgment of the Hon'ble Supreme Court in **Samar Ghosh Vs Jeya Ghosh** reported in **2007 4 SCC 511** and judgment of this Court in **R. Frederick Vs H. Malini** reported in **2018 1 MLJ 325**. The judgment of the Hon'ble Supreme Court in **Samar Ghosh Vs Jeya Ghosh** (cited supra) is a celebrated judgment on the topic of cruelty. Even though the term of 'cruelty' cannot be defined, the broader principle have been indicated, which reads as under:-

" 101.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave,

<https://hcservices.ecourts.gov.in/hcservices> and weighty.



(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which caused unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."



16.The respondent/husband wants a decree of divorce to be confirmed by relying upon illustration fourteen mentioned in the judgment. According to the Hon'ble Supreme Court when the matrimonial bond is found broken beyond repair for all practical purposes, feelings and emotions of the parties must be kept in mind.

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17. Per contra, the learned counsel for the appellant/wife would contend that even after the problem arose between the parties, when the petitioner/husband was admitted in the hospital, the wife was assisting him, so, the question of bitterness as pointed out by the Trial Court is not correct. P.W.1, during the course of cross examination have fairly admitted that he was admitted in Tirunelveli Hospital due to illness and at that time, the wife was assisting him. But at the same time, he had added a rider stating that the appellant/wife indulged in quarrel with his brothers, after driving them away, she was with him. But this qualified statement cannot be given any importance. It is quite, but natural that when the parties were at logger heads, what happened is the common and usual for such occurrence to happen. But, the fact remains that the appellant/wife took care of the respondent/husband during his illness. When the appellant/wife was cross examined by the petitioner, another fact also have been brought on record. After filing of this petition, the petitioner/husband become ill and admitted in Tirunelveli Hospital and at that time, the wife tried to attend the husband, But this suggestion runs quite contrary to the admission made by the petitioner / husband as mentioned above. So, whatever it may be, it is seen that even after bitterness, difference of opinion arose between them, the appellant/wife was attending and the husband has also co-operated. So relying upon this important circumstance, it is contended on the part of the appellant/wife that the bitterness between the parties, even now has not gone to the extend of no return. This clearly shows that as observed by the Trial Court, the mutual allegations were made only for the purpose of allegations i.e., tit for tat. Beyond this there is nothing substantial in it.

18. The next question is cruelty. As mentioned earlier, the performance of the marriage between the second respondent and the first daughter, took place during the pendency of the petition. Only after the marriage, the petitioner was cross examined by the respondent. Even at that time, the petitioner has not filed any additional ground stating that the marriage has caused mental cruelty. Only at the time of cross examination of the appellant, a suggestion was made to the effect that only to cover up her illicit intimacy, she has given her daughter in marriage to the second respondent. But, I am unable to accept this. As to how the mother will try to sacrifice her daughter for the sake of saving



her reputation in the society. I am unable to accept as to how this act had caused mental cruelty to the husband. The second respondent was moving with the family as one of the members from childhood. All of a sudden, baseless suspicion cropped up in the mind of the husband. When this is being so, how giving in marriage of the first daughter to the second respondent had caused mental cruelty to the husband is not explained by hi.. That is why I have mentioned that it is not even his case, before the Trial Court during the course of evidence that this act caused much mental agony to him, which made the joint living impossible. After marriage, it is admitted by the wife that the second respondent and her first daughter are living with her. This cannot be construed as a continuous cruelty. So, I am of the considered view that the findings of the Trial Court, on these aspects, are not sound. As mentioned earlier, granting of divorce at this stage, when the third daughter is ready for marriage, may not be in the interest of the family. Suspicion not only kills others, but, also thyself. 'Suspicion will remain as a suspicion for ever and it will never become true unless and until it becomes true'. Here, it has not become true. Baseless suspicion should not be taken to snap the marital bond. There is every possibility for the husband to have a second thought, atleast by keeping in mind the welfare of the female children, to resume co-habitation.

19. So, I find that the findings recorded by the Trial Court requires to be set aside. Hence, the order passed by the Principal District Judge, Thoothukudi in I.D.O.P.No.57 of 2007, dated 15.06.2010, is set aside and accordingly, this Civil Miscellaneous Appeal is allowed. The petition filed by the respondent/petitioner stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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Note:

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official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To **மேலாதிபதி**

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1.The Principal District Judge,
Thoothukudi.

2.The Record Keeper-2 copies
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.P.JESSI JEVA PRIYA, Advocate (SR-548[F] dated 07/01/2021)

+1 CC to Mr.C.DHANASEELAN, Advocate (SR-586[F] dated 08/01/2021)

**C.M.A(MD) No.20 of 2011
and
MP(MD)No.1 of 2011
06.01.2021**

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