



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 30.03.2021

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

and

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A (MD) No.122 of 2016
and CMP (MD) No.2018 of 2016

Sornalakshmi

... Appellant/Respondent

Vs.

K.G.Sivakumar

... Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 9 of the Family Courts Act 1984, to set aside the decreetal order, dated 05.05.2015 passed in H.M.O.P.No.292 of 2014 on the file of the Family Court, Tirunelveli.

For Appellant : Mr.M.Alagappan
For Respondent : Mr.V.Angusamy

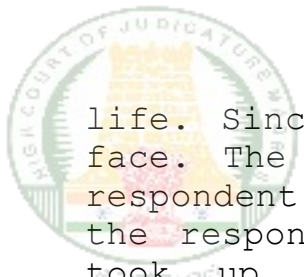
J U D G M E N T

[Judgment of the Court was delivered by **S.KANNAMMAL, J.**]

This Civil Miscellaneous Appeal is preferred against Judgment and Decree passed in H.M.O.P.No.292 of 2014, dated 05.05.2015 by the Family Court, Tirunelveli.

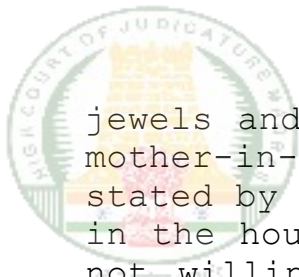
2.The case of the respondent/husband is that the marriage between the appellant/wife and the respondent/husband was solemnized on 31.08.2011 as per Hindu Rites and Customs. At the time of marriage, the appellant was working as a Manager in Axis Bank at Tirunelveli. During marriage, the appellant/wife was given jewels and household articles, but the respondent has no personal knowledge. After marriage, the respondent/husband and the appellant/wife had lived together happily for fifteen days at respondent/husband's house. On 15.09.2011, the appellant/wife went to her parent's house to see her mother who was unwell. After ten days, when the respondent/husband went to the appellant's house to bring her back, both the appellant/wife and her parents insisted the respondent to live with them for which the respondent claimed that he cannot leave his aged mother, who was suffering from illness. The appellant/wife without having interest to live with the respondent, came with the respondent. Since the appellant was not interested in the family life, she failed to behave as a

<https://hcservices.courts.gov.in/hcservices/> and did not show any interest in the matrimonial



life. Since she was employed she behaved adamantly with a rigid face. The attitude of the appellant caused mental agony to the respondent. Since the appellant/wife was a Manager in the Bank, the respondent took care of the appellant in all manner and he took up the family responsibility. When the appellant was conceived, the respondent allowed her to stay with her parents and from there, she went to her job. Though the respondent informed about his circumstances that he could not leave his aged and sick mother alone, the appellant/wife insisted the respondent to come and live with her in her parent's house. On 29.12.2011 the appellant/wife gave a complaint against the respondent/husband and his mother before the District Social Welfare Officer, Tirunelveli stating that she was asked to enter the kitchen only after taking bath and she was insisted to take the first month salary after keeping the same in the Pooja room and she was insisted to do the household works. On 06.10.2011, the District Social Welfare Officer, Tirunelveli advised the appellant/wife to live with the respondent, but the appellant/wife wanted to live with the respondent separately. During counseling the appellant/wife told that she was not willing to live with the respondent, which caused mental agony to the respondent. The appellant/wife has also filed M.C.No.4 of 2012 before the Family Court and it was referred before the Lok Adalat. On hearing that the appellant gave birth to a male child, the respondent/husband tried to contact the appellant/wife over phone but the appellant threatened him that she would run away to some place out of his reach, if the respondent comes to see them. Though the respondent was willing to live with the appellant, the appellant refused to live with him. The respondent/husband was permitted to see his child at Salai Kumarasamy Temple at Tirunelveli junction. On 25.10.2012, the respondent went to see his child at the specified place and when he tried to talk with the appellant, the appellant conveyed that she was not interested to talk with the respondent/husband and left the place in a short period. Though the counseling was held for eight times before the Lok Adalat, no settlement was arrived before the Lok Adalat and the petition was remitted to Judicial Magistrate No.1, Tirunelveli. On 31.05.2013, the appellant not pressed the application and the same was closed. Though the respondent had taken much efforts to live with the appellant, the appellant without any reason was living separately from the respondent. The respondent/husband sent a legal notice for reunion, but the appellant had not taken any steps to come and live with the respondent. Hence the respondent filed a petition for divorce on the ground of cruelty and desertion.

3.The appellant/wife denied the allegations made against her in the affidavit. It is specifically stated that in the house of one Mr.Chidambaram, they discussed about the jewels and household articles and it was false to say that they have not demanded



jewels and articles. The money and jewels were handed over to the mother-in-law in order to avoid problems. It is not correct as stated by the respondent that the respondent was compelled to live in the house of the mother of the appellant and the appellant is not willing to live in matrimonial home. The respondent and his mother insulted the appellant and her parents pertaining to the "Sridana" articles and the appellant was not even allowed to take bath in hot water during winter season. The respondent/husband demanded a sum of Rs.5,00,000/- from her parents. Hence, the appellant/wife has given a complaint before the All Women Police Station, Palayam on 27.02.2014. Further the appellant was treated cruelly. With regard to the jewels, the appellant filed a petition before the Social Welfare Officer. After that both the appellant and the respondent lived together till 2011. Though the birth of child was informed, the respondent/husband never came to see the child. The respondent's mother took much efforts to get them separated. The appellant wants to live with the respondent in a separate residence in order to save her matrimonial life. Hence, the appellant prayed for dismissal of the petition.

4.The respondent/husband was examined as PW1 and the Marriage Invitation, Marriage Photos, copy of legal notice sent by the respondent, copy of reply notice sent by the appellant, xerox copy of respondent's Ration Card were marked as Ex.P1 to Ex.P5 respectively. On the side of the appellant, the appellant was examined as RW1 and copy of petition sent by the appellant to the Protection Officer, copy of the petition by the appellant to the Protection Officer, report of the Protection Officer, counter of the appellant in M.C.No.4 of 2012 on the file of Chief Judicial Magistrate No.1, the report of District Social Welfare Officer, Tirunelveli were marked as Ex.R1 to Ex.R5 respectively.

5.The learned Family Judge, Tirunelveli, after perusing the materials available on record, both oral and documentary, has granted decree of divorce in H.M.O.P.No.292 of 2014, dated 05.05.2015. Aggrieved over the said order, the appellant/wife is before this court.

6.Heard both sides and perused the materials available on record.

7. The points for consideration in this Civil Miscellaneous Petition are:

i) whether the acts of the appellant amounts to cruelty and whether the respondent is entitled for divorce under this ground?

ii) whether the acts of the appellant amounts to desertion and whether the respondent is entitled for divorce under this ground?



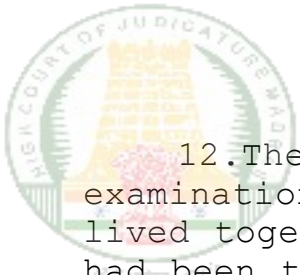
iii) whether the learned Family Court Judge was right in allowing the petition filed by the husband in H.M.O.P No. 292 of 2014?

8. There is no dispute about the marriage between the appellant/wife and respondent/husband and a child born on 09.05.2012 out of wedlock. Admittedly, the appellant/wife was working as a Manager in Axis Bank, Tirunelveli and the respondent was working in TATA Company. It is also an admitted fact that the respondent is the only son and was living with widowed mother. It is also an admitted fact that at the time of marriage a sum of Rs.75,000/- was given by the appellant's parents apart from jewels and house hold articles. It is clear from the evidence of the respondent that both the appellant and respondent lived together only for thirty five days.

9. According to the respondent/husband both the appellant and respondent lived together happily for fifteen days. On 15.09.2011 the appellant went to her parent's house by saying that her mother was unwell and when the respondent went there to bring back the appellant the respondent was compelled to stay with them. The respondent informed them about his inability to leave her aged diseased mother, who is living with the support of the respondent. It is also the case of the respondent that when he informed his inability to leave her mother alone, the appellant did not show any interest to live with the respondent. The appellant has not behaved like a dutiful wife and there was no affection from her side for the respondent which made the respondent feel mental agony.

10. The respondent submitted that since the appellant got conceived he felt happy and considering the physical and mental health of the appellant, she was permitted to be with her parents and from there the appellant went for her job. The respondent further submitted that when the respondent contacted the appellant over phone at many times, the respondent was compelled to come and stay in the parental home of the appellant. It is also submitted that when the respondent informed his circumstances the appellant and her parents insulted the respondent in a filthy manner which caused mental cruelty to the respondent.

11. It is the case of the respondent that the appellant gave a petition before the Social Welfare Officer with flimsy allegations and in the counseling the appellant was advised to live with the respondent but the appellant refused to come and live with the respondent. Though the respondent took much efforts for re-union, the appellant insisted for a separate house and she was willing to live with the respondent in a separate house leaving his mother alone and thus the appellant deserted the respondent.



12.The appellant/wife, who was examined as RW1 in her cross examination has deposed that both the appellant and respondent lived together for thirty five days. Out of thirty five days she had been to her parental house to see her mother, who was unwell. Further she has deposed that she would go for work by 8.00 a.m. and return back by 9.00 p.m. The appellant had further deposed that out of thirty five days she had been to the office for twenty three days. The appellant has also deposed that she was at her matrimonial home for two hours during Thalai Deepavali and returned to her parental home. It is clear that the stay of the appellant at her marital home was only for a very short duration.

13.The appellant had given a petition before the District Social Welfare Officer for Domestic Violence Act. The appellant has also stated that she has preferred a complaint before the All Women Police Station against her mother-in-law. The Family Court has rightly pointed out that the appellant has given petition before the Social Welfare Officer on flimsy grounds. In that complaint before the Social Welfare Officer, Tirunelveli, the appellant has stated that she was insulted for not having brought dowry, she was restricted not to meet specific persons and was compelled to hand over the salary.

14.In the report, Ex.R5 given by the Protection Officer it has been stated that since the appellant was compelled to do the house hold works she left the matrimonial house on 6.10.2011. Further it is stated in the report that the appellant after her delivery was willing to live with the respondent separately and the respondent/husband was not willing to have a separate family leaving his mother. Hence it is clear from the report by the Protection Officer, Tirunelveli, the appellant did not want to be in the joint family where the respondent's mother alone was staying with the respondent. The appellant wanted to have a separate family by leaving the respondent's mother all alone. It is also clear from the report Ex.R5 that there was no dowry harassment as alleged by the respondent. The appellant in her cross examination, dated 16.04.2015 has categorically deposed as follows:

'28.12.2011-ல் மாவட்ட சமூக அலுவலரிடம் புகார் கொடுத்தேன். அதற்காக கூப்பிட்டு விசாரித்தார்கள். தாயாரை விட்டு வந்தால், குழந்தை பிறந்த பிறகு வாழ தயாராக உள்ளேன் என்று கூறினேன் " .

Hence the appellant's main intention was to deprive the respondent's mother from her son's protection and care.



15. In **Narendra Vs. K.Meena**, reported in **2016(9) SCC 455**, in paragraph No.11 has held as follows:-

''11.A son brought up and given education by his parents, has a moral and legal obligation to take care and maintain the parents, when they become old and when they have either no income or have a meagre income. In India, generally people do not subscribe to the western thought, where upon getting married or attaining majority, the son gets separated from the family. In normal circumstances, a wife is expected to be with the family of the husband after the marriage. She becomes integral to and forms part of the family of the husband and normally without any justifiable strong reason, she would never insist that her husband should get separated from the family and live only with her.

.....
.....
If a wife makes an attempt to deviate from the normal practice and normal custom of the society, she must have some justifiable reason for that and in this case, we do not find any justifiable reason, except monetary consideration of the respondent wife. In our opinion, normally, no husband would tolerate this and no son would like to be separated from his old parents and other family members, who are also dependent upon his income. The persistent effort of the respondent wife to constrain the appellant to be separated from the family would be torturous for the husband and in our opinion, the trial Court was right when it came to the conclusion that this constitutes an act of 'cruelty'.

In the present case on hand, the appellant/wife with the main aim of deserting the widowed mother in law and to deprive her from the affection and support of her only son had preferred a complaint before a social welfare officer with false and flimsy allegations which obviously amounts to cruelty on the part of appellant and she is not entitled for the relief sought for.

In the case of **K.Srinivasa Rao Vs D.A.Deepa** reported in (2013) 5 Supreme Court Cases 226 the apex court has held that conduct of respondent wife in filing a complaint making unfounded, indecent and defamatory allegation against her



mother- in-law, amounts to Mental cruelty. The appellant/wife in order to have a separate family by leaving the respondent's mother made false allegations and false complaints. When it is proved that there was no dowry harassment and the intention of the appellant was to have a separate family the act and attitude of the appellant amounts to nothing but mental cruelty.

16. The Hon'ble Supreme Court in the case of **Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi**, reported in 2002 (1) SCC 308, has held as follows:-

'**Desertion** in the context of matrimonial law represents a legal conception. It is difficult to give a comprehensive definition of the term. The essential ingredients of this offence in order that it may furnish a ground for relief are :

1. The factum of separation;
2. The intention to bring cohabitation permanently to an end animus deserendi;

3. The element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period; The clause lays down the rule that desertion to amount to a matrimonial offence must be for a continuous period of not less than two years immediately preceding the presentation of the petition. This clause has to be read with the Explanation. The Explanation has widened the definition of desertion to include willful neglect of the petitioning spouse by the respondent. It states that to amount to a matrimonial offence desertion must be without reasonable cause and without the consent or against the wish of the petitioner. From the Explanation it is abundantly clear that the legislature intended to give to the expression a wide import which includes willful neglect of the petitioner by the other party to the marriage. Therefore, for the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly, two elements are essential so far as the deserted spouse is



concerned: (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petitioner for divorce bears the burden of proving those elements in the two spouses respectively and their continuance throughout the statutory period.

17. Keeping in view the above decisions and also considering the facts and circumstances of this case, we are of the considered view that the well considered decree of divorce granted by the trial Court does not call for any interference by this court.

18. In the result, the Civil Miscellaneous Appeal is dismissed and the order and decree passed by the Family Court, Tirunelveli, in H.M.O.P.No.292 of 2014, dated 05.05.2015 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

vsd

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for 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

1. The Judge, Family Court, Tirunelveli.

2. The Section Officer, V.R section,

Madurai Bench of Madras High Court, Madurai (2 copies).

+1 CC to M/s.V.ANGUSAMY, Advocate (SR-14299[F] dated 30/03/2021)
+1 CC to M/s.M.ALAGAPPAN, Advocate (SR-14647[F] dated 31/03/2021)

Judgment made in
C.M.A (MD) No.122 of 2016
and CMP (MD) No.2018 of 2016
30.03.2021

PM (CO)

TR (27.04.2021) 8P 6C