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IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 26.11.2021

JUDGMENT PRONOUNCED ON : 29.04.2022

CORAM :

THE HON'BLE MR.JUSTICE T.RAJA
AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.NO.1799 OF 2014

Dennison Paulraj

... Appellant/Petitioner

Versus

Maya Winola

... Respondent/Respondent

Prayer : Civil Miscellaneous Appeal has been filed under Section 19 of Family Courts Act, to set aside the order passed by the Learned Principal Judge, Family Court, Chennai made in O.P.No.887 of 2005, dated 27.03.2013 and allow the above Appeal.

For Appellant : Mr.V.Chandrasekaran

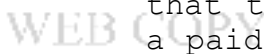
For Respondent : Mr.M.Chidambaram

JUDGMENT

Mr.Justice.D.Bharatha Chakravarthy

Aggrieved by the Judgment and decree of the Learned Principal Family Judge, Chennai, in O.P.No.887 of 2005 dated 27.03.2013, thereby, dismissing the petition filed by the appellant/husband under Section 10(x) of the Indian Divorce Act, for dissolving the marriage between him and the respondent, dated 05.07.2004 at CSI Trinity Church, Avadi, by granting a decree of divorce, the present appeal is filed.

2.The appellant/husband had filed a Original Petition in O.P.No.887 of 2005 on 12.04.2005 with a prayer for Judicial separation and thereafter, filed an I.A.No.31 of 2007 to amend



3. The gist of the allegation in the petition for divorce is that the appellant belongs to the working class and he works as a paid employee for a monthly salary of Rs.1,000/- in the stores owned by his parents. They were living as a joint family and from the day one of the marriage, the respondent was indifferent, did not perform any household work, insisted that she will not walk up even to the nearest place and treated his family members as her servants. The in-laws of the appellant did not treat him well, the respondent wanted to cook non-vegetarian food on all days and she was in the habit of writing a personal diary, in which, she writes ill about his family. In a book called "Better every day" the respondent had noted down the telephone numbers of the All Women Police Stations at Adayar, Nungabakkam and Teynampet Police Stations. Even the appellant's parents offered to set up a separate residence, but the respondent refused. However, she picked up a quarrel with the family members and spent long hours on the telephone. When the appellant was changing his clothes in the hall, the respondent made scurrilous allegations that he wantonly changed the clothes in the hall only because he is having an illicit relationship with his sister-in-law. The respondent instigated his brother-in-law to throw her sister, out of his house. When the family members attempted to mediate, the respondent did not heed to the advice. The appellant advised the respondent to be patient as she was pregnant. The respondent was using Section 498 of I.P.C., to cow down the appellant to yield to her demands. Thus, the respondent caused grave mental cruelty and therefore, the appellant is entitled for a divorce.

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that it is not wise to quarrel with the daughter-in-law and even if things are not well-advised her to set up separate residence. The appellant's mother was not interested in the respondent begetting a baby and asked her to consume papaya. The respondent used the phone only convey to her mother about her agonies. She never complained about the food. Only complaining about the 12 sovereigns of the jewels, the appellant did not celebrate Christmas at the respondent's house. There was never any offer for setting up a separate residence. She is always willing to join the appellant. When she was in the ninth month of pregnancy without even informing her, the appellant was making attempt to leave for Saudi Arabia and therefore, when she and her parents came to the in-law's house, there was a quarrel and physical altercation, in which her father was actually assaulted, which was reported to the police. The respondent herein never filed any police complaint. It is only the appellant and the family members, who voluntarily filed Anticipatory Bail application on the file of this Court, which was dismissed as "no case". The respondent is not at fault. She is willing to live with the appellant. They did not even consider to unite the couple, even though she delivered a girl child on 12.05.2005. There is no cause of action for filing the petition and the respondent is agreeing to live with the appellant.

5. Since there was no amicable settlement between the parties despite of counseling, the Family Court had no other option than to proceed with the trial. The petitioner examined himself as P.W.1. The marriage invitation of the parties was marked as Ex.P1. The marriage photographs were marked as Ex.P2. The electoral card of the family members of the petitioner is marked as Ex.P3. The marriage certificate is marked as Ex.P4 and the copy of the few pages of the book (5 sheets) having the title "Better Every day" as Ex.P5. A copy of the petition filed by the respondent dated 30.01.2010, under Section 31 of the Protection of Women from Domestic Violence Act, 2005 as Ex.P6. A copy of the order dated 23.03.2012 in C.C.No.103 of 2010 was marked as Ex.P7. On behalf of the respondent, the respondent herself was examined as R.W.1; father, Paulraj Nadar as R.W.2; one Mylai C.Periyasamy, who involved in making peace efforts as R.W.3; M.Santhosh Kumar, brother-in-law of the appellant, as R.W.4. On the side of the respondent, a copy of the complaint dated 26.04.2005, lodged by the respondent's father to the Inspector of Police, Teynampet Police Station was marked as Ex.R1. The order of this Court in W.P.No.28521 of 2008, dated 03.04.2009 dismissing the Writ Petition filed by the appellant and his family members, challenging the constitutional validity of some of the provisions of the Domestic Violence Act, is marked as Ex.R2. The certificate, dated 12.10.2009 stating that she never lodged any complaint, from E-3 Teynampet Police



Station is marked as Ex.R3. The order passed by the Court of the learned Judicial Magistrate No.II, Poonamallee in S.T.C.No.103 of 2007 is marked as Ex.R4.

6. Upon considering the evidence let in by either side, the materials on record, the Family Court found that the allegations made by the husband in the petition about the cruelty are unbelievable and embellished allegations. The appellant herein presented a petition for judicial separation when the respondent's wife was nine months pregnant. The appellant and his parents never visited the child. The evidence of R.W.2 namely respondent's father is reliable and inspires confidence of this Court. The appellant/husband did not examine, the Pastor, Jayakumar, who said to have conducted a mediation, even though he is closely related to him. Two incidents of the quarrel by the appellant's mother with the daughter-in-law are not denied by the appellant.

7. The Trial Court also found that there seems to be high-handed behaviour on the part of the appellant's parents to the effect that the petitioner's brother and sister are also living separately from their wife, husband respectively. Finally, the Family Court found that there is no allegation which can be construed as cruelty and conflict has arisen, on account of the trivial things and the domestic violence complaint was subsequently filed in the year 2010, with an intention to join the husband. Finally, holding that the appellant has failed to prove the allegations, the Trial Court dismissed the petition filed by the appellant/husband.

8. When the matter came up for hearing before this Court, this Court also summoned the parties and interacted with them. However, no amicable solution could be effected between the parties and therefore, the matter was heard on merits.

9. Mr. V. Chandrasekaran, learned Counsel for the appellant would submit that the action of the wife in noting down the telephone numbers of the Police Station even before any conflict had arisen would establish the attitude of the respondent/wife. Because of her own fault, she went out of the matrimonial home. Now the parties are living separately, since then, for sixteen years and the husband had suffered not only with the cruel behaviour, when the respondent stayed at matrimonial home for a period of seven months but thereafter also the appellant/husband and his family members were repeatedly harassed by lodging frivolous and false complaints under Domestic Violence Proceedings, on account of which, the appellant/husband was put to give mental torture, as such, he is entitled for divorce.



10. On the other hand, the learned Counsel for the respondent would submit that like any other wife/respondent she simply admonished her husband for changing his cloths in the hall of the house, while other womenfolk in the joint family were present and for the said innocuous behaviour, the appellant and his family members behaved in an unduly hyper manner, creating and escalating conflict. The respondent had to apologise before the entire family in the presence of Pastor, Jayakumar and even then the matter was not given quietus. As a matter of fact, his client has been abused only for providing less than 75 sovereign jewels and accounting for the gifts given by her own mother's sister and other relatives towards 75 sovereigns was an issue which enraged the appellant's mother on account of which, the respondent has been constantly nagged. His client was sent to her mother's place during the seventh month of pregnancy and during the ninth month of pregnancy, it is only the husband who further escalated the matrimonial issue by filing a petition before the Family Court on 12.04.2005. Subsequently, the husband's family also, to further escalate the conflict, assaulted the respondent and her family members. Thus, from the beginning, they started harassing the respondent for separation. The respondent is all along willing to live with the appellant. In spite of number of years, his client, even moved into a small rented house, which is nearer to the appellant's house and was begging and waiting for the appellant to come and visit her and start living with her. But, the appellant did not live with her and is seeking divorce and his client had not committed any mistake, and the long separation is only on account of the fault of the appellant and therefore, he cannot take advantage of his own fault.

11. We have given our anxious consideration to the arguments advanced on either side. Both sides were equally vociferous in voicing their perspective about the facts of the case. The appellant stood ground to his version in his evidence and the respondent to her ground in her evidence. It is a trite proposition that people may lie but not the circumstances.

12. The first circumstance, in this case, is that it is the husband who filed the original petition on 12.04.2005 when the respondent was in the ninth month of pregnancy and when she was sent to her parent's house. No complaint was lodged by the respondent at that point of time and even thereafter, the appellant's family members themselves filed an anticipatory bail application which was dismissed as "no case". The second circumstance, thereafter, the conflict was further escalated when the respondent and her parents visited the appellant's



house on 26.04.2005. The alleged frivolous complaints under the Domestic Violence Act proceedings are only subsequent, therefore, these circumstances stare on the face of the appellant.

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13.The third circumstance is that when the respondent gave birth to the baby on 12.05.2005, the appellant and his family members never even visited the child. The fourth circumstance that both siblings namely brother and sister of the appellant were also not living with respective spouses and are living with the appellant's parents. Coupled with the other circumstances, on the side of the respondent, she had also examined R.W.3, an independent person in support of her case. The Family Court also considered the evidence of the respondent's father, who had deposed in a fair manner and found that his evidence is inspiring and the same is supporting the case of respondent. Therefore, there is no clinching evidence which is let in by the appellant, in respect of cruel behaviour within the seven months of marriage, in which they lived together.

14.As far as the contention about the filing of the complaint under Domestic Violence proceeding, we find that the first step was by the appellant, triggering, escalating and conflicting for filing the petition for judicial separation against the respondent/wife, when she was in the ninth month of pregnancy. The appellant, even challenged the vires of the Domestic Violence Act before this Court and therefore, when the parties indulge in the escalation of conflicts and one petition or other is filed during the process, we are unable to hold that the subsequent conduct of the wife in filing complaints under the Domestic Violence Act as frivolous or that it was calculated to harass the appellant so as to hold the same as conduct in a manner to inflict cruelty on the appellant.

15.We find that the judgment of the learned Family Court is well reasoned and it has thoroughly considered all the issues and we are in agreement with the findings of the Family Court. The constant, but undeviating submissions made by the respondent/wife in the interest of herself and in the interest of her female child, studying 11th standard dissuades us from deciding otherwise only on the efflux of time. On the other hand, if the materials on record are considered, no exceptions can be taken to the findings and conclusions of the Family Court and the appellant has not made any ground for grant of the relief.



16. In the result, this Civil Miscellaneous Appeal stands dismissed. There is no order as to costs. Consequently, the connected miscellaneous petitions, if any, are closed.

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Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

klt

To

The Principal Judge,
Family Court, Chennai.

+1cc to Mr.M.Chidambaram, Advocate, S.R.No.30166

+1cc to Mr.V.Chandrasekaran, Advocate, S.R.No.30807

C.M.A.No.1799 of 2014

SKM(CO)
RLP(15/06/2022)