



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.02.2022

Coram:

THE HONOURABLE MR.JUSTICE T.RAJA  
and  
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.2274 of 2019  
and  
C.M.P.No.9877 of 2019

K.Pavithran, S/o Krishnasamy  
.. Appellant/ Petitioner / Respondent

Vs.

K.S.Sindhu,  
W/o K.Pavithran  
and D/o Selvaraj .. Respondent/ Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, against the fair and final order dated 25.03.2019 made in I.A.No.2 of 2019 in G.W.O.P.No.15 of 2018 on the file of the Family Court, Namakkal.

For appellant : Mr.P.M.Duraiswamy  
For respondent: Mr.N.Manokaran

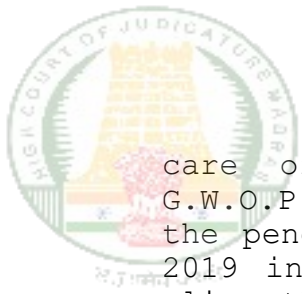
#### JUDGMENT

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

The appeal is heard through video-conferencing.

2. The appellant-K.Pavithran has brought this appeal aggrieved by the dismissal of his petition to direct the respondent-wife to undergo medical examination before the Medical Board consisting of expert Doctors.

3. The learned counsel for the appellant-husband submitted that after the marriage was solemnized between the appellant and the respondent on 02.07.2014, they were blessed with a girl child (P.Nakshatra) on 01.05.2015 at 24-Care Hospital, Erode. After living for about four long years, due to difference of opinion that arose between them, the appellant-husband has filed a divorce petition in H.M.O.P.No.611 of 2018 on the file of the Family Court, Namakkal on 18.03.2018. The child is being taken



care of by the appellant-father. Therefore, he has filed G.W.O.P.No.15 of 2018 before the Family Court, Namakkal. During the pendency of the matter, the appellant has filed I.A.No.2 of 2019 in G.W.O.P.No.15 of 2018, stating various reasons, inter-alia, that the respondent-wife developed hatred against him and behaved very badly with kin and also with others for no fault of others. Due to abnormality in the respondent-wife's behaviour even towards the child, only because of the fact that the respondent-wife has been behaving like a mentally ill person, he has come to know that she has been suffering from Bipolar Mood Disorder and Personality Disorder and because, at one point of time, she deserted the appellant and the child on the mid-night of 08.03.2018, and after deserting them, she voluntarily left for her parents' house, and then again when she came back on the next day, i.e. on 09.03.2018, there was a physical quarrel between the appellant-husband and the respondent-wife. In the said in-fight that took place between them, she had also bitten the appellant-husband, for which, a complaint has also been given. Learned counsel for the appellant, drawing notice to the medical report, dated 09.03.2018, issued by T.M.F.Hospital, Tirupur, showing that the appellant was taking treatment due to the human fight caused by the respondent-wife. He further submitted that because of the imbalance caused due to the Bipolar Mood Disorder, the respondent-wife has been behaving badly. Moreover, when she has been harshly behaving with strange attitude towards the appellant-husband, it was also noticed that she was also not taking care of the child because of the said Bipolar Mood Disorder and Personality Disorder. Therefore, the child is being taken care of by the appellant (father), for which he has also moved the aforesaid G.W.O.P., which is pending.

4. In an effort to prove that she is suffering from Bipolar Mood Disorder and Personality Disorder, the appellant-husband has also moved I.A.No.2 of 2019 in G.W.O.P.No.15 of 2018 before the Family Court, Namakkal, with a prayer to direct the respondent-wife to undergo medical examination before the Medical Board consisting of expert Doctors, but the learned Judge of the Family Court, without even appreciating the fact that the respondent has not come forward to undergo the above test, and finding fault with the appellant that he has not made out a prima-facie case, has wrongly dismissed the said I.A. Therefore, the impugned order passed by the Family Court is liable to go. In support of his prayer, the learned counsel for the appellant-husband brought to our notice that normally, a wife could not go to the extent of biting her own husband, but in the present case, the appellant-husband was bitten by the respondent-wife, for which, he has also taken treatment on 09.03.2018 at T.M.F.Hospital, Tirupur.



5. Secondly, she has left the matrimonial home, leaving even the child on 09.03.2018 and she is refusing to appear before the Medical Board and if she is not suffering from the aforesaid medical problem, she would have really accepted the prayer and proved before the Court by appearing before the Medical Board. She has filed a strong counter affidavit opposing the prayer sought for in the said application. The learned Judge of the Family Court also has wrongly dismissed the same. Therefore, the impugned order is liable to go.

6. Finally, the learned counsel for the appellant-husband submitted that if the application in I.A.No.2 of 2019 in G.W.O.P.No.15 of 2018 is allowed and the respondent-wife appears before the Medical Board and comes up with a clean chit, that would help both the Court and also the parties to take a fair decision and also to ascertain as to whether the allegations made by the appellant in H.M.O.P.No.611 of 2018 and G.W.O.P.No.15 of 2018 are justifiable and reasonable or not.

7. Learned counsel appearing for the respondent-wife submitted that mere indifferent attitude shown by one spouse towards the other, cannot be taken as a serious or abnormal attitude, for which, the appellant cannot call the respondent as suffering from Bipolar Mood Disorder and Personality Disorder. Even the medical document showing that the appellant was taking treatment for human fight on 09.03.2018, cannot be accepted against the respondent-wife for the reason that it is not known as to whether any such incident had taken place. The reason is very simple that when the appellant has come to the Family Court saying that on the ground that the respondent-wife deserted the appellant-husband on 08.03.2018 and on 09.03.2018, again, after returning back to the matrimonial home, she behaved indifferently and in the melee, she had bitten the appellant, and these aspects ought to have been examined by the trial Court.

8. Secondly, the alleged incident that the respondent has bitten the appellant, and therefore, she is suffering from Bipolar Mood Disorder and Personality Disorder, is far from acceptance, inasmuch as, when the appellant-husband himself has made four FIRs against the respondent-wife and her family members and that only clearly shows that she is suffering from some disorder. But the respondent-wife has not thrown any such allegation. Moreover compelling a person to undergo the medical test to get the clean chit in respect of her Bipolar Mood Disorder and Personality Disorder, is not automatic, and unless a party directed the other party to undergo medical test, makes out a clear case, the Court cannot, merely accepting the bald allegation, direct the party to undergo the medical test. Today, the hospitals are overwhelming with Corona patients with Corona Virus, and therefore, we cannot take a risk of visiting the hospitals and get into the unexpected problem.



9. This Court heard the submissions made on either side and perused the materials available on record.

10. When the appellant-husband has filed a petition in H.M.O.P.No.611 of 2018 on the file of the Family Court, seeking divorce on the ground of mental cruelty, invoking Section 13(1) (1a) of the Hindu Marriage Act, citing various reasons and one such reason shows that the respondent-wife has been misbehaving not only with the appellant-husband, but also with the child and not taking care of the child. No doubt, the allegation that the respondent has been suffering from Bipolar Mood Disorder and Personality Disorder, has not been pleaded in the main H.M.O.P.No.611 of 2018. But drawing our notice to the biting incident that had taken place on 09.03.2018, as a result, the appellant-husband has gone to the said hospital for taking treatment, and the same has been emphasized more by the learned counsel for the appellant that only the incident has taken place for the reason that the respondent-wife has been suffering from Bipolar Mood Disorder and Personality Disorder.

11. Secondly, it was also alleged in the G.W.O.P. that the respondent being the mother, has not been taking care of the child, because of the reason that she is suffering from mental imbalance. Therefore, to strengthen his case, the appellant has taken up I.A.No.2 of 2019 in G.W.O.P.No.15 of 2018, with a specific prayer to direct the respondent-wife to undergo the test before the Medical Board consisting of expert Doctors.

12. No doubt, the respondent-wife has opposed the above prayer. As a result, the Family Court had dismissed the said I.A.No.2 of 2019 in G.W.O.P.No.15 of 2018. But what we are impressed by the arguments advanced by the learned counsel for the appellant/husband is that, when the appellant complains that he was bitten by his wife on 09.03.2018, for which also, he had taken treatment and the medical treatment is supported by the medical document, namely the prescription issued by T.M.F.Hospital, Tirupur. Secondly, when the respondent also deserted both the appellant-husband and the child, who is presently going to School in a place under the care and custody of the appellant-husband, we are also of the view that taking a medical report to clear as to whether she is actually suffering from Bipolar Mood Disorder and Personality Disorder, is the need of the hour. This is for the reason that when the appellant-husband has filed H.M.O.P.No.611 of 2018 citing that the respondent-wife is suffering from mental disorder and she is not entitled to have the custody of the child, we are of the view that if the medical report is made ready of the issue whether she suffers from Bipolar Mood Disorder and Personality Disorder or not, H.M.O.P.No.611 of 2018 and the pending G.W.O.P. No.15 of 2018, can be disposed of effortlessly.



13. Therefore, we are of the considered view that the respondent-wife shall appear before a Medical Board and undergo the medical examination to prove as to whether she is actually suffering from any such Disorders, for which, we direct the respondent-wife to be present before the Medical Board and since there is no medical College in Namakkal District, to examine the respondent, we direct the Medical Board of Erode Government Medical College Hospital to examine the respondent (wife) on the said aspect and submit a report thereof within eight weeks before the Family Court, Namakkal.

14. In view of the direction and observations made above, we allow the present appeal by setting aside the impugned order of the Family Court, Namakkal. There shall be no order as to costs in this appeal. Consequently, C.M.P. is closed.

Sd/-  
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

CS  
To

1. The Judge, Family Court, Namakkal.
2. The Section Officer, V.R. Section, High Court, Madras.
3. The Dean, Government Medical College and Hospital, Erode.

+2 ccs to Mr.P.M.Duraiswamy, Advocate Sr.NO.6775  
+1 cc to Mr.N.Manokaran, Advocate Sr.NO. 7245

C.M.A.No.2274 of 2019

RP(CO)  
A.SK(16/03/2022)