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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	28.09.2021
Pronounced on	24.01.2022

CORAM

THE HONOURABLE Mrs.JUSTICE S.KANNAMMAL

C.M.S.A.No.60 of 2021 &
C.M.P.No.11736 of 2021

S.Nathiya

.. Appellant/Respondent
in Trial Court

Vs.

P.Puviyarasan

.. Respondent/Petitioner
in Trial Court

Prayer: Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act 1955 r/w Section 100 of the Code of Civil Procedure against the fair and decreetal order passed by the learned Principal District and Sessions Judge, Villupuram dated 20.01.2020 in C.M.A.No.14 of 2019 in reversing the order passed in H.M.O.P.No.106 of 2014 by the learned Principal Subordinate Judge, Tindivanam on 04.04.2019.

For Appellant : Mr.K.Balakrishnan

For Respondent: No appearance

JUDGMENT

The appellant, who was the wife of the respondent, has come up with the present Civil Miscellaneous Second Appeal against the fair and decreetal order passed by the learned Principal District and Sessions Judge, Villupuram dated 20.01.2020 in C.M.A.No.14 of 2019, in which divorce was granted to the respondent, by reversing the order passed in H.M.O.P.No.106 of 2014 by the Principal Subordinate Judge, Tindivanam on 04.04.2019.

2. The brief facts of the case are as follows:-

2.1. The appellant is the wife and the respondent is the husband and their marriage was an arranged marriage, which was solemnised on 15.09.2013. At the time of marriage, Rs.25,000/- was offered in order to purchase cot, two wheeler and 4



Sovereigns of gold by the appellant to the respondent as sridhana and the respondent has spent Rs.2,00,000/- for the marriage. The respondent, who is the husband of the appellant, has preferred H.M.O.P.No.106 of 2014 under Section 13(1)(i-a) Hindu Marriage Act before the learned Principal Subordinate Judge, Dindivanam, seeking divorce, by contending that the appellant did not live with the respondent right from the date of marriage and that she was always staying in her parents house.

2.2. Further, the respondent / husband contended that the appellant refused to have cohabitation with the respondent and threatened him by stating that she will end her life by hanging, if the respondent insisted on her for cohabitation. Further, the appellant was always in verbal conversation through phone with the son of her uncle and when the same was questioned by the respondent, the appellant replied in vague manner that she would speak to anyone and the same need not be questioned by anybody and further threatened that she would lodge a false complaint on demand of dowry against the respondent and the appellant had also threatened the respondent that she would commit suicide, thereby causing mental agony to the respondent, and, therefore, the respondent sought divorce.

2.3. However, the same was refused by the appellant before the trial court by stating that the appellant and the respondent were having a peaceful matrimonial life for a period of 6 months and out of the wedlock, the respondent was pregnant and the same was aborted after 67 days. Further, when the respondent and his family members demanded sridhana from the appellant, problem arose between them and on account of the same, the appellant attempted to commit suicide, but, however, her parents spent Rs.4,000/- and saved her and took her to their house. That apart, a complaint was lodged by the appellant on 08.09.2014 before All Women Police station, Kottakuppam, and during the course of enquiry, the respondent had stated that he would live with the appellant in a generous manner and taken the appellant to the matrimonial house and, thereafter, the respondent had beaten the appellant and pushed her out of the matrimonial house.

3. The trial Court examined the respondent as P.W.1 and marked Exs.P.1 to P.7 and the appellant as R.W.1 and marked Exs.R 1 to R.3. The trial Court, upon hearing the submission on either side and on relying the Judgments in 2018(2) MWN (Civil) 609, 2018 (2)MWN (Civil) 613, rendered a finding that in the absence of a valid reason / ground, the petition for divorce cannot be granted and, thereby, rejected the prayer of the respondent.

4. As against the said dismissal, the respondent / husband



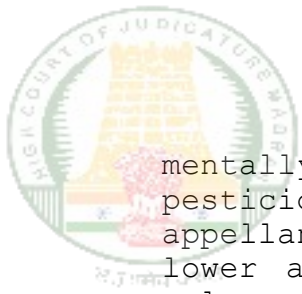
filed a appeal before the lower appellate court in C.M.A.No.14 of 2019 by contending that the respondent had discharged his onus with cogent and tenable evidence that the appellant / wife imparted cruelty both physically and mentally on the respondent. Further, the appellant / wife attempted to commit suicide in the matrimonial home, which was proved by him through the oral and documentary evidence and stated that it is impossible to continue the matrimonial life with the appellant. Further, the trial court had also failed to note that the appellant / wife had lodged two false complaints, causing mental agony to the respondent, and, thereby, stated that it was impossible to lead a happy marital relationship with the appellant and sought for divorce.

5. The lower appellate Court in C.M.A.No.14 of 2019 on 20.01.2020 granted divorce, by observing that the appellant had lodged false cases against the respondent and further, after the marriage with the respondent, the appellant was with the respondent only for a period of six months and failed to take legal action to live with the respondent, relying on the decision of the Hon'ble Supreme Court reported in (2014) 16 SCC 34. Challenging the grant of divorce, the appellant / wife is before this Court.

6. This Civil Miscellaneous Second Appeal was admitted on the following substantial question of law :

Whether the learned first appellate court is correct in allowing the petition for divorce under Section 13(1)(ic) of Hindu Marriage Act, 1955, especially, when there is no evidence both oral and documentary on behalf of the respondent ?

7. Learned counsel for the appellant contended that the Appellate court had granted divorce to the respondent on flimsy grounds and the same is an abuse of process of law and, hence, pleaded to set aside the same. He would further contend that the lower appellate Court failed to see that the respondent has not taken any steps to join with the appellant, even though the appellant made sincere efforts to join with the respondent from September 2014 onwards, but, however, the respondent chose to file divorce petition on the ground of cruelty. The learned counsel also submits that the appellant was with the respondent only for a period of six months peacefully and also became pregnant and only at the intervention of the respondent's mother, the family problem arose between the appellant and the respondent, for which, the appellant was unnecessarily blamed by the respondent and finally filed the divorce petition. He further contends that the lower appellate Court failed to see that because the respondent and his mother caused cruelty both



mentally and physically to the appellant, she has consumed pesticide on 15.03.2014 and, in consequence to that, the appellant was admitted in a hospital at Tindivanam, but the lower appellate Court erred in holding that the appellant had only caused cruelty to the respondent by giving false complaints. According to him, the lower appellate Court failed to see that the ingredients of cruelty as per Section 13(i)(a) of Hindu Marriage Act 1955 were not made out. In addition, the learned counsel submitted that the lower appellate Court has relied on the decision produced by the respondent and failed to rely on the various judgments produced by the learned counsel for the appellant, even though those are rightly applicable to the facts of the appellant's case and erred in granting divorce to the respondent, and, hence, he pleaded to set aside the judgment and decree passed in C.M.A.No.14 of 2019 dated 20.01.2020.

8. Though notice was sent as early as on 06.08.2021, the same was refused to be received by the respondent and there is no representation on behalf of the respondent on 02.09.2021, 21.09.2021 and 28.09.2021.

9. Heard the learned counsel for the appellant and perused the material available on record.

10. H.M.O.P.No.106 of 2014 has been filed by the respondent/husband under Section 13 (1)(ia) of Hindu Marriage Act, 1955, seeking for dissolution of the marriage, dated 15.09.2013. While coming to the question of cruelty, it was pleaded in the petition by the respondent/husband that the appellant had not lived a harmonious life with the respondent and behaved in a disrespectful manner; she never liked to have family life; she threatened to commit suicide whenever the respondent touched her; and whenever she was questioned about talking over phone, there was a threat of preferring false complaints of demand of dowry and attempted to commit suicide by consuming pesticide and prior to marriage, she had illegal contacts with one Vijayakumar who is the son of paternal uncle of the appellant, and that she neglected the respondent without any valid reason.

11. All the allegations made in the petition were denied by the appellant herein. The appellant, in her counter, had stated that the appellant and the respondent lived happily for six months, got conceived and later got aborted on the 67th day. It is stated that since there was demand about jewels and sridhana articles and unable to bear the cruel attitude of the respondent and her mother, she made an attempt to commit suicide. It is stated that the respondent obtained signature under threat in a Rs.10/- stamp paper and written as though the appellant is a



mentally retarded person. It is further stated, pursuant to a police complaint against the appellant for dowry demand, the respondent, on enquiry, undertook to lead a harmonious life with the appellant but the appellant was driven out of the house by the respondent and his mother and the appellant was always willing to live with the respondent.

12. The trial Court dismissed the petition on the ground that the respondent herein has not proved his allegations and no case of cruelty is made out as against the appellant. On appeal, the lower appellate Court, on re-appreciation of evidence and other materials on record, held that the allegation of illegal contacts of the appellant with one Vijayakumar before marriage was not proved by the respondent. The lower appellate Court has also observed that there was no explanation given by the appellant for the difference in the date of birth in Ex.P5, transfer certificate, and Ex.P6, horoscope. Obviously, there is four years' difference between Ex.P5 and ExP6.

13. It is the specific case of the respondent herein that the appellant denied sex without any valid reason, whereas, the appellant's case is that she lived with the respondent happily for six months and she got conceived and later got aborted and took treatment for the same. But, the appellant has not proved the same, by producing any documentary evidence. The next specific case of the respondent herein is that the appellant used to threaten the respondent of committing suicide whenever the respondent touched her. The appellant, in her counter, has stated that when she was tortured for the jewels by the respondent and his mother, she was forced to commit suicide, whereas, the appellant, in her evidence, has categorically deposed that she was not treated cruelly by the respondent and his father. Then, she would depose that whenever she went to her mother-in-law's house, they refused to allow her inside, by beating.

14. Though there was no demand of dowry, the appellant had preferred three police complaints against the respondent and his parents. It is clear from the evidence of the appellant that she was not treated cruelly, but she had preferred complaint against the respondent and his parents, which were then obviously proved to be false complaints. It is the appellant's evidence that during wordy quarrel, she beat her mother-in-law. Later, she would say that since her mother-in-law beat her in the police station, she beat her at home.

15. What is mental cruelty, has been discussed by the Hon'ble Supreme Court in the case of Samar Ghosh v. Jaya Ghosh, 2007 (4) SCC 511, as under :



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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 sterilization 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. Denial of Sex without any valid reason amounts to mental cruelty. Threatening to commit suicide for no fault on the husband amounts to cruelty. Attempting to commit suicide also amounts to mental cruelty. The allegations of cruelty by the respondent were proved by the clear and categorical evidence of the appellant herein and the lower appellate Court has discussed all those aspects.

17. The appellant did not want to live a harmonious life. Admittedly, the appellant was in the matrimonial home for a short period of six months. The appellant has also received all her jewels and articles and is living with her parents and she has not taken any steps for reunion. The lower appellate Court has elaborately discussed all the aspects and rightly granted divorce in favour of the respondent, by setting aside the dismissal order of the trial Court.

18. In view of the above mentioned reasons, this Civil



Miscellaneous Second Appeal deserves dismissal and, it is, accordingly, dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

ssd/dixit

To

1. The Principal District and Sessions Judge,
Villupuram.
2. The Principal Subordinate Judge,
Tindivanam.

COPY TO
The Section Officer,
VR Section,
High Court, Madras-104.

C.M.S.A.No.60 of 2021

SV (CO)
CT 22/03/2022