



C.M.A.No.1603 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.11.2022

Pronounced on : 22.12.2022

CORAM

**THE HONOURABLE MS. JUSTICE V.M.VELUMANI
AND**

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1603 of 2020

and

C.M.P.No.11807 of 2020 and Cross Objection No.16 of 2021

C.M.A.No.1603 of 2020

Swarnalatha @ Latha

... Appellant

Vs.

V.M.Gopalakrishnan

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19(1) of the Family Court Act, to set aside the fair and final order partly allowing the petition in FCOP.No.99 of 2016, on the file of the Family Court, Erode, dated 19.03.2020.

For Appellant : Mr.V.Raghavachari

For Respondent : Mr.K.V.Muthuvisagam
for Mr.M.Guruprasad



C.M.A.No.1603 of 2020

Cross Objection No.16 of 2021

V.M.Gopalakrishnan

... Cross Objector

Vs.

Swarnalatha @ Latha

... Respondent

PRAYER: Cross Objection petition has been filed to set aside Decree and Judgment dated 19.03.2020 made in F.C.O.P.No.99 of 2020 on the file of the Family Court, Erode in so far as the disallowed portion and grant divorce on the ground of desertion.

For Cross Objectitioner : Mr.R.Shase

For Respondent : Mr.V.Ragavachari

JUDGMENT

SUNDER MOHAN, J.

The Civil Miscellaneous Appeal has been filed by the wife challenging the decree of divorce granted to the respondent herein on his petition in F.C.O.P.No.99 of 2016 filed for divorce on the ground of cruelty and desertion.

2. The respondent herein filed a petition for divorce stating that he married the appellant on 23.01.2013. In the wedlock, a boy child named Maurya was born to them on 26.11.2013. Eversince the date of marriage, the appellant and



C.M.A.No.1603 of 2020

the respondent did not get along well. The appellant used to visit her parents' house without informing the respondent. The appellant was working as a Maths teacher and would constantly insult the respondent stating that he was an illiterate person. She did not cooperate in the conjugal relationship. The appellant left the matrimonial home on 25.07.2013 within six months of the marriage, when she was carrying their son. The elders of the family tried to negotiate. The Panchayat was held by two elderly persons known to both the families and in the said Panchayat, the appellant told the Panchayat members that the respondent was having illicit relationship with his friend's wife. She disrespected the respondent. Even after the child was born, neither the respondent nor his parents were allowed to see the child or participate in the ceremonies held for the child. Therefore, the respondent sent a Lawyer's notice to the appellant on 26.01.2016, expressing his willingness for divorce. On receipt of the same, the appellant sent a false reply on 16.02.2016, stating that the respondent had illegal relationship with his friend's wife. The appellant also had alleged that the respondent spent his entire salary for immoral purposes. She stated that the respondent on one occasion came to her parents' house in an inebriated condition and abused both the appellant and her parents. The respondent thereafter filed the petition for divorce in the year 2016 on the ground of cruelty and desertion.



3. The appellant herein filed a counter statement denying all the averments made in the petition. She admitted to the fact of the respondent issuing notice and her sending reply notice. She further stated that the respondent was in the habit of contacting his friend's wife and constantly talking to her over phone and sending messages to her. Even in public places, the respondent was close to his friend's wife. The respondent used to give lift to the said lady very often. She reiterated the averments made in the reply notice sent through a Lawyer. She denied that she had deserted the respondent. She stated that the respondent was invited for all the ceremonies held for the benefit of her child, including naming ceremony and tonsure function. She was forced to leave the appellant because he refused to discontinue the illicit relationship.

4. Before the Family Court, Erode, the respondent examined three witnesses on his side as PW1 to PW3 and marked Exhibits P1 to P14. The appellant examined RW1 to RW3 on her side and marked Exhibits R1 to R5.

5. The Family Court, Erode, on perusal of oral and documentary evidence found that the respondent had established the allegations of cruelty and granted divorce on the ground of cruelty. However, the Family Court, Erode found that the respondent had not established desertion and dismissed the prayer in so far as desertion is concerned.

6. Against, the said order dated 19.03.2020 made in F.C.O.P.No.99 of



C.M.A.No.1603 of 2020

2016, the appellant has filed the above C.M.A.No.1603 of 2020. The Respondent has filed the Cross Objection No.16 of 2021, aggrieved by the dismissal of his petition on the ground of desertion.

7. Mr.V.Raghavachari, learned counsel for the appellant would submit that the allegations would not amount to cruelty even if the same are to be accepted as true. This was only a normal wear and tear in any marital life. The appellant is a dutiful wife and only out of love and affection, she requested the respondent to refrain from being close to his friend's wife. This is a normal conduct of any wife and should not be construed as an act of cruelty. It is the respondent, who had deserted the appellant and he had made false averments in the petition stating that he was not invited for the ceremonies conducted in the house of the appellant for their child like naming ceremony, tonsure function, etc. Likewise, the photographs taken during the Valaikappu function and tonsure function marked as Exhibits R1 and R2 series would also establish the presence of the respondent in all the functions. Since the respondent had made false statements to obtain a decree of divorce, he is not entitled to any relief as per Section 23 of the Hindu Marriage Act. He cannot be allowed to take advantage of his own wrong. The learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in the case of ***Gurbux Singh Vs. Harminster Kaur*** reported in ***(2010) 14 SCC 301*** in support of his submission that trivial incidents and isolated



C.M.A.No.1603 of 2020

incidents cannot be the basis for holding that the appellant had committed cruelty on the respondent.

8. Mr.K.V.Muthuvisagam, learned counsel for the respondent submitted that the appellant and the respondent are not living as husband and wife since 2013. The appellant was in the habit of insulting the respondent in the presence of elders and relatives. It is not an isolated incident, but a continuous harassment committed by her. She not only made false allegations against the respondent that he was having illicit relationship with his friend's wife, but also falsely alleged that he was leading an immoral life and associated himself with many ladies. The learned counsel would further submit that the appellant had also given false complaints before the Police alleging that the respondent had demanded dowry. Exhibit P8 is the complaint given by the appellant before the Police. Besides that the appellant had reiterated the allegation of illicit intimacy in her deposition as well. The false complaint given by the appellant was closed since the Police found that the complaint was not true. Before the Police, she gave a statement that she would sort out the issues with her husband in Court and the said statement is marked as Exhibit P12. She had also given a complaint to



C.M.A.No.1603 of 2020

the Protection Officer, Erode, which resulted in a DVC Complaint No.4 of 2019 before the learned Chief Judicial Magistrate, Erode. The said complaint was also dismissed on 24.11.2017. Therefore, the learned counsel for the respondent submitted that since the appellant was in the habit of making false complaints and had constantly accused the respondent of having illegal intimacy, it had caused mental cruelty to the respondent. In this regard, the learned counsel for the respondent relied upon the judgment of the Hon'ble Supreme Court in the case of ***Sivasankaran Vs. Santhimeenal*** reported in ***2021 SCC OnLine SC 702***. Further the appellant and the respondent are living separately since 2013. All the efforts made to reunite the couple have ended in vain. There is no possibility of leading a peaceful matrimonial life once again. Hence, he prayed for dismissal of the appeal and for confirming the decree of divorce granted by the Family Court, Erode.

9. Heard the learned counsels for either sides and perused the pleadings, oral and documentary evidences.

10. Admittedly, the appellant and the respondent are living separately since 2013. The appellant herself has admitted in her deposition that she had given a complaint (Exhibit P8) to the Police. She had also admitted that the said



complaint was closed since both the parties gave a letter that they would sort out the issues before the Court. She had further admitted that she had stated before the Panchayat, who attempted to reconcile the differences, that the main reason for their separation was the respondent's illegal intimacy with his friend's wife. We find that nowhere the appellant has stated about dowry harassment. However, she had given a complaint alleging dowry harassment. Making false allegations of dowry demand not only as against the husband/respondent, but also his relatives, namely, mother and sister is bound to cause cruelty. The appellant had not only stopped with this, she had also given a Domestic Violence Complaint, which also came to be dismissed. In the said complaint, she had alleged harassment by the respondent. Hence, the submission of the learned counsel for the appellant that the respondent is taking advantage of his own wrong cannot be countenanced. The filing of false complaints is by the appellant.

11. Further, the appellant has made allegations of illegal intimacy by the respondent with his friend's wife. The respondent would deny the same. If the allegations are false, it would certainly cause cruelty to the respondent/husband. The appellant had not simply requested the respondent to stop the alleged illegal relationship. She herself has admitted that she refused to live with the respondent in spite of the intervention of the elders, since the respondent continued his illegal



relationship with another lady. Eitherway whether the allegations are true or false, it would show that the matrimonial bond is beyond repair.

12. The Hon'ble Supreme Court in the case of **Naveen Kohli Vs. Neelu**

Kohli reported in **(2006) 4 SCC 558** has held as follows:

“74. ... once the marriage has broken down beyond repair, it would be unrealistic for the law not to take notice of that fact, and it would be harmful to society and injurious to the interests of the parties. Where there has been a long period of continuous separation, it may fairly be surmised 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.

85. Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. ...



86. *In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto.*”

13. The Hon'ble Supreme Court in the case of ***Samar Ghosh Vs. Jaya Ghosh*** reported in **(2007) 4 SCC 511** had observed as follows:

“(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.”

14. The Hon'ble Apex Court in a recent judgment in the case of



Sivasankaran Vs. Santhimeenal reported in **2021 SCC OnLine SC 702** had held

that the subsequent circumstances also are relevant for considering the petition for divorce. In this context, the Hon'ble Apex Court observed as follows:

“16. No doubt, the courts below did not find adequate material to come to the conclusion that the appellant was entitled to divorce on grounds of cruelty. However, there are many subsequent circumstances which have arisen in the present case which necessitated the examination of this aspect. The question, thus, is whether the respondent's conduct after the initial trigger for divorce amounts to mental cruelty.”

15. Thus, applying the principles laid down in the above judgments, we find that the matrimonial bond is beyond repair and it shows disintegration of marital unity. The appellant and the respondent have been living separately for more than nine years. The allegations and counter allegations would show that there is no possibility of a reunion or leading a peaceful and meaningful marital life. The marriage in such circumstances cannot be allowed to remain only on paper leaving the parties clueless as to their marital status. The appellant has given several complaints which had accelerated the disintegration of the marriage. The allegation of illegal intimacy may be a solitary incident but are grave enough to break the marriage and trust between the parties, besides causing cruelty.



16. As regards the Cross Objection filed by the respondent challenging the finding that he had not established desertion on the part of his wife, it is seen that the divorce petition was filed on 08.03.2016. Admittedly, the respondent and the appellant were living separately since 25.07.2013. The evidence adduced on the part of the appellant would show that the respondent had attended the function organized by the appellant in her parents' house on 29.09.2014. They had jointly gone to a temple on 15.08.2014. The respondent has not produced any evidence to disprove or improbabilise the evidence of the appellant in this regard. Therefore, the allegation that the appellant deserted the respondent for more than two years has not been established by the respondent herein. The finding of the Trial Court in this regard also is justified. Hence, the Cross Objection filed by the respondent challenging the finding that he had not established desertion is devoid of merits and the Cross Objection is dismissed.

17. Hence, for all the above reasons, we find that the order of the Family Court, Erode in F.C.O.P.No.99 of 2016 is justified and there is no reason for us to interfere in the said order. Accordingly, the Civil Miscellaneous Appeal is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.



C.M.A.No.1603 of 2020

[V.M.V., J.]

[S.M., J.]

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Index : Yes/No

Speaking/Non-Speaking Order

Lm/ay



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C.M.A.No.1603 of 2020

V.M.VELUMANI, J.
and
SUNDER MOHAN, J.

Lm/ay

**Pre-Delivery Judgment in
C.M.A.No.1603 of 2020
and C.M.P.No.11807 of 2020 &
Cross Objection No.16 of 2021**

22.12.2022