



C.M.A.Nos. 4309 & 4310 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21.09.2022
Delivered on	.11.2022

CORAM:

THE HONOURABLE MS. JUSTICE V.M.VELUMANI
and
THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

C.M.A.Nos. 4309 & 4310 of 2019
and
C.M.P.Nos. 24376 and 24379 of 2019

Kulandaivelan

... Appellant in
both Appeals

Versus

S.Kalyani

... Respondent in
both Appeals

Prayer in CMA.No.4309 of 2019: Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984 read with Order 43 Rule 1(D) of the Code of Civil Procedure, to set aside the fair and decreetal order dated 31.07.2019 passed in O.P.No.2281 of 2017 on the file of the III Additional Principal Judge, Family Court, Chennai.



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Prayer in CMA.No.4310 of 2019: Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984 read with Order 43 Rule 1(D) of the Code of Civil Procedure, to set aside the fair and decretal order dated 31.07.2019 passed in O.P.No. 2926 of 2015 on the file of the III Additional Principal Judge Family Court, Chennai.

In both CMAs:

For Appellant : Mr.T.K.S. Bharathy Anandraj
For Respondent : Mr.Jayesh B. Dolia
For M/s. Aiyar and Dolia for sole
respondent

COMMON JUDGMENT

T.V.THAMILSELVI, J.

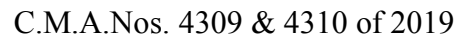
These Civil Miscellaneous Appeals have been filed against the common order, dated 31.07.2019 passed in O.P.Nos.2281 of 2017 and 2926 of 2015 by the learned III Additional Principal Judge, Family Court, Chennai, and to set aside the same.



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WEB COPY 2. The appellant/husband herein is the respondent and the respondent/wife herein is the petitioner in both the said original petitions.

3. The respondent/wife has filed H.M.O.P.No.2281 of 2017 before the Subordinate Judge, Pudukottai, under Section 13 (i) (1-a) of the Hindu Marriage Act, 1955 to dissolve the marriage solemnized between the appellant/husband and the respondent/wife on 05.06.2011 as per the Hindu Rites and Customs on the ground of cruelty. The appellant/husband has filed F.C.O.P.No.2926 of 2015 before the III Additional Principal Judge, Family Court, Chennai, under Section 9 of the Hindu Marriage Act, 1955, praying for restitution of conjugal rights. After perusing the entire records, the Court below allowed the O.P.No.2281 of 2017 filed by the respondent, thereby the marriage solemnized between the appellant and the respondent on 05.06.2011 and registered on 29.02.2013 in the office of the Sub-Registrar, Anna Nagar, Chennai, was dissolved by a decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, on the ground of cruelty and O.P.No.2926 of 2015 filed by the appellant, was dismissed by common order dated 31.07.2019. Challenging the said findings of the Court



4. Brief facts set out in the appeals are as follows.-

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respondent attended the mediation session on 19.11.2015 before the Mediation and Conciliation Centre at Madurai Bench of Madras High Court and the mediation ended in fiasco. Therefore, there was no mediation and conciliation between the appellant and the respondent and the respondent has filed HMOP.No.2281 of 2017 before the III Additional Family Court, Chennai, seeking divorce from the appellant by stating that the appellant and his parents have demanded dowry and they harassed her and also the appellant is having illegal intimacy with another woman, viz., Sindhu. After receiving the summons in the above divorce petition and that too a day before the day of hearing in H.M.O.P.No. 58 of 2015 on the file of Sub Court, Pudukottai, different petitions have been filed as if the appellant lived with respondent peacefully. As per the order of Madurai Bench of this Court in Tr.CMP.No.306 of 2015, FCOP.No.58 of 2015 was transferred to the Family Court, Chennai and renumbered as OP.No.2281 of 2017. Before the Family Court, Chennai, mediation was conducted but there was no scope for mediation and conciliation between themselves and untenable allegations were made against the wife. The appellant visited his wife's house in order to see the child during the day time and he unnecessarily



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created annoyance and created mental agony to his wife and child.

Moreover, the appellant went to the school of the child and harassed the child in the presence of the school authorities. Further more, after filing of the divorce petition, the appellant made phone calls and emails to the office of the respondent and harassed her in the presence of other staff and behaved in an irritating manner and caused unnecessary disturbances to the respondent over phone calls. The appellant went to the work place of the respondent on the morning of 04.04.2016 and repeated his dramatics before the members of staff and higher officials. All these facts have caused mental agony to the respondent. Hence, she prays to grant divorce on the ground of cruelty.

6. As a counterblast, the appellant has filed a petition in FCOP.No.2926 of 2015 before the III Addl. Family Court, Chennai for restitution of conjugal rights. After perusing oral and documentary evidence adduced and on considering the submissions of the learned counsels either side, the Court below held that though the appellant filed an application for restitution of conjugal right, he was not allowed to live with the respondent



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and considering that he harassed her by entering into her office during office hours and also made unnecessary phone calls besides he has also caused disturbance and not taken any steps to maintain and to take care of the child the conduct of the husband has caused mental agony to respondent and therefore, divorce was granted. Challenging the said findings of the Court below, the appellant has preferred the present two appeals.

7. The learned counsel appearing for the appellant contended that the Court below has failed to take note of the fact that the appellant intended to live with her but the respondent given a false complaint against the appellant stating that harassment was made by the husband and his family members and without observing all these facts and circumstances of the case, the Court below erroneously granted divorce as if he committed cruelty to her. Hence, he prays to set aside the findings of the Court below as unjust and unfair.

8. By way of reply, the learned counsel appearing for the respondent contended that from the date of marriage, the respondent was



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working as Bank Employee. She was harassed by her husband and he has not cared for the welfare of the family with love and affection. He used to harass her at the instigation of his parents. Besides, he had thrown her from the matrimonial home nearly about 2 years and caused cruelty. The appellant is not interested to reunite with the respondent but he frequently visited the office of the respondent and made phone calls, sent emails to the higher officers and also disturbed her by making phone calls and harassed her during office hours. Considering the submissions made by the learned counsel on either side, the Court below correctly granted divorce which need no interference and the appeals have no merits.

9. Heard the learned counsel for the appellant as well as respondent and perused the records.

10. The following points arise for consideration in these appeals.-

- (i) Whether the respondent is entitled to decree of dissolution of marriage on the ground of cruelty?



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(ii) Whether the appellant is entitled to restitution of conjugal rights?

11. Taking into consideration the facts and circumstances of the case, and on considering both submissions made by the learned counsel on either side, it is evident that soon after the marriage solemnized between the appellant and the respondent, she was ill-treated by the husband and in-laws. Admittedly, the respondent was a Bank Employee and she was harassed by the appellant and his family members. She was forcibly thrown out from the matrimonial home in the year 2013. Thereby, till date, she and her child are under the care of her parents. On perusal of the records it reveals that after filing of the original petition, the husband used to make phone calls and sent emails to the respondent and sending mails to the higher officers and also during pandemic situation, she was harassed in front of other staff during office hours and humiliated her in the presence of the higher officers. It is the case of the respondent that she suffered with mental agony and cruelty. Though the husband filed a petition for restitution of conjugal rights but his conduct does not reveal that really he intended to live with her. Furthermore, the appellant has not denied that during office hours he went to the office of the wife caused unpleasant situation in her working



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place. Apart from that he used to go to the school where the child is studying thereby caused disturbance to the respondent and child. The wife and child were harassed by the husband for all these years. No conciliation and reunion could be arrived between the appellant and the respondent before the Tamil Nadu Mediation and Conciliation Center. All these facts were rightly appreciated by the Family Court Judge, Chennai. Apart from that, all the facts revealed that the appellant developed an illegal intimacy with another woman, namely, Sindhu and when the same was questioned by the wife, he got annoyed, but till date he developed intimacy with another lady and caused mental agony and the same is also one of the grounds for divorce. Though adulterous life with another lady has not been proved by the wife but certainly the illegal intimacy with another lady would cause mental agony to the respondent/wife. So, the wife is entitled to divorce on the ground of cruelty.

12. The following judgments relied on by the learned counsel for the respondent are squarely applicable to the facts of the present case. The relevant portions of the said judgments are extracted hereunder. The



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judgment of the Division Bench of this Court, (dated 05.07.2022) in

CMA.No.3249 of 2017, in **C. Sivakumar v. A. Srividhya**, wherein it has been held as follows.-

9. The appellant herein sought for divorce on the ground of cruelty. The expression cruelty was very well explained by the Apex Court in a case law *A.Jayachandra versus Annel kaur*, reported in (2005) 2 Supreme Court Cases 22 . The relevant observations of the Apex Court explaining concept of cruelty is as follows:

“10. The expression “cruelty“ has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial



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wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complaint spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one



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has to consider the evidence in matrimonial disputes.

11. The expression “Cruelty“ has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is



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proved or admitted.(See Shobha Rani V.Madhukar Reddi.)“ (Emphasis supplied)

10. In the light of above observations of the Apex Court it is clear that cruelty includes mental cruelty and it need not be physical. In some cases even the very conduct complained of itself is sufficient to infer mental cruelty and the impact of injury caused by said offending act of the other spouse need not be enquired into or considered.

11. In the case on hand, in the divorce petition of the husband it was specifically pleaded that wife suspected his character and she visited his work place and created scene there by using filthy language and connecting the appellant with other female teaching staff working with him, in the presence of students and other colleagues in the college. Though, the respondent made a general denial of the same in her counter, she made a specific plea in her pleadings in paragraph 4 and the same is as follows:

“But the petitioner having illegal intimacy with other working womens and he was speaking till the



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midnight is every day night. The petitioner was beaten blue and black while she made enquiry regarding cell phone conversation till midnight.“

13. The appellant/husband was examined as P.W.1 and he deposed in support of his pleadings in his divorce petition. In order to prove his allegations that the respondent visited the appellant-s work place and created scene there, he examined his co~employee working in Vivekanandha Medical College as P.W.2. He deposed that respondent came to college during the second week of June, 2011 at about 04.30. P.M. and scolded the appellant with filthy language in front of other teaching staffs and students. On going through the admissions of the respondent in her pleadings and also in her oral and documentary evidence, which was corroborated by the evidences of P.W.1 and P.W.2, we can safely infer that the respondent/wife visited the college in which the appellant/husband was working and she created a scene there by connecting the appellant with other female teaching staff in the presence of other staff members and students. Certainly this act of the respondent would amount to mental cruelty



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within the meaning of Section 13(1)(ia) of Hindu Marriage Act as explained by the Apex Court in the case law A.Jayachandra versus Annel kaur cited supra. We can also add that this act of respondent would certainly cause serious, irreparable injury to the image of the appellant in the minds of his colleagues and students.

(ii) The judgment of the Division Bench of this Court, (dated 21.07.2022), in **CMA.No.1319 of 2014**, in [**R. Premanand v. P. Latha**], wherein it has been held as follows:-

5. The Family Court after consideration of oral and documentary evidences found that the appellant failed to prove both the grounds of desertion and cruelty pleaded by him and consequently dismissed the divorce application. Aggrieved by the same the present appeal is filed and thereafter there is no meaningful cohabitation between them.

8. On going through the oral and documentary evidence it is clear the marriage had taken place on 23.01.1998 and the parties lived together for a short period and a male child was born during November



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1998. It is also admitted by the respondent that there was no continuous cohabitation. According to the respondent, she used to visit the appellant-s house during vacation. As per the averments in the petition, the respondent came to matrimonial home during May 2006 and stayed there for one day. The petition for divorce was filed immediately thereafter. So condition for filing petition on the ground of desertion namely separation for a continuous period of two years is not satisfied in the present case. The learned counsel for the appellant relied on Debananda Tamuli Vs. Smti Kakumoni Katakya reported in (2022) 5 SCC 459 for a proposition that stay of wife at matrimonial home for one day cannot be termed as resumption of cohabitation. The close scrutiny of that case makes it clear that husband in that case was doing business in Tezpur and the wife was working as a Lecturer in Guwahati. The marriage was solemnised on 17.06.2009 and they had been living separately from 01.07.2009. The divorce petition was filed on 09.09.2011. It was argued in that case by wife she came down to the husband-s place during December 2009 in order to attend funeral of her Mother~in~law for one day.



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Therefore there was no separation for continuous period of 2 years. In that context the Apex Court said staying in husband-s house for single day for the purpose of attending funeral of mother~in~law cannot be termed as resumption of cohabitation. As far as the case on hand is concerned there was no special occasion for the wife to visit the husband-s house during May 2006. She visited husband-s house in May 2006 during holidays and in view of some misunderstanding she left the matrimonial home within a day. It cannot be termed as a casual visit for a single day on special occasion. She came back to husband-s house with an intention to resume cohabitation but due to eruption of some misunderstanding, she left the matrimonial home . Therefore the main condition for maintaining an application for divorce on ground of desertion namely continuous separation for 2 years is not satisfied in this case. Therefore the finding of the Family Court that husband has not made out a case for desertion is well founded and the same is confirmed.

13. The ratio in the above two judgments are squarely applicable



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to the facts of the present case, the Court below has rightly appreciated the facts for granting divorce and allowed the O.P.No.2281 of 2017 filed by the respondent/wife, dissolving the marriage conducted between the petitioner/husband and the respondent/wife on 05.06.2011 registered on 29.02.2013 in the office of the Sub Registrar, Anna Nagar, Chennai, and granted decree of divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 on the ground of cruelty and O.P.No.2926 of 2015 filed by the petitioner/husband for restitution of conjugal right was dismissed by order dated 31.07.2019. This Court do not find any reason for interference in the order passed by the Court below and these Civil Miscellaneous Appeals have no merits and the same are liable to be dismissed.

14. With the above observations, both the Civil Miscellaneous Appeals are dismissed and the common order dated 31.07.2019 passed in O.P.No.2281 of 2017 and 2926 of 2015 on the file of III Additional Family Court, Chennai, are confirmed. There shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are closed.



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[V.M.V.,J.] [T.V.T.S.,J.]

.11.2022

msm

Speaking Order : Yes/No

To

The III Additional Principal Judge, Family Court,
Chennai.

V.M.VELUMANI, J.
and
T.V.THAMILSELVI, J.

msm

Pre-Delivery Common Judgment
in
C.M.A.Nos.4309 & 4310 of 2019



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C.M.A.Nos. 4309 & 4310 of 2019

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Pre-Delivery Judgment
in
C.M.A.Nos. 4309 & 4310 of 2019

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

Most Respectfully Submitted
M.Samuthiram-PA (msm)