



C.M.A.No.42 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on:	Judgment delivered on:
18.08.2022	12.10.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.42 of 2022 and
C.M.P.Nos.290, 291 & 2876 of 2022

Suganthi

.. Appellant

Vs.

Shanmuga Priyan

.. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984, against the order and decree dated 06.10.2021 made in H.M.O.P.No.90 of 2018 on the file of the Family Court, Cuddalore.

For Appellant : Ms.G.S.Thilagavathi
For Respondent : Mr.M.R.Thangavel
for Mr.V.Balamurugan

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI, J.)

The appellant / wife is challenging the order and decree of the Family Court, Cuddalore dated 16.10.2021 made in H.M.O.P.No.90 of



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2018, granting divorce to the respondent / husband by dissolving the marriage conducted between the appellant and respondent on 12.06.2014.

2.The appellant is wife and respondent is husband. Originally the respondent filed H.M.O.P.No.115 of 2017 under Section 13 (1) (i-a) of the Hindu Marriage Act, 1955 on the file of the Sub Court, Cuddalore for dissolution of the marriage conducted between the respondent and appellant on 12.06.2014. Later the said H.M.O.P.No.115 of 2017 was transferred to the file of the Family Court, Cuddalore and re-numbered as H.M.O.P.No.90 of 2018.

Case of the respondent:

3.According to the respondent, the marriage between the respondent and appellant was fixed by the elders of the family and the marriage was conducted on 12.06.2014 at Kasthuri Thirumana Mandapam, Neyveli – 2. From that date onwards, the appellant was indifferent towards respondent. After engagement, the appellant did not talk to the respondent. Before marriage and after engagement, the respondent's family received a postal cover in which there was a xerox copy of a photo of the appellant with another person with a letter stating



that the appellant and the said person are in love with each other. The appellant's father informed the respondent and his family members to ignore the same and proceed with the marriage arrangement. Before marriage, when both the appellant as well as respondent along with their family members went to Kancheepuram to purchase wedding clothes, at that time, the appellant totally avoided the respondent and threatened the respondent that she would lodge Police complaint even if he try to put up a finger on her without permission of her. When all the family members went to have dinner, the appellant refused to get down from the vehicle. The appellant did not show any interest to talk to the respondent even after betrothal. She always abused the respondent and picked up quarrel with him finding some or other fault.

3(i). Even after the marriage, the appellant was very indifferent towards respondent and did not show any interest in matrimonial life. Even during honeymoon, the appellant did not change her attitude and respondent was forced to cut the trip and return home. The appellant did not mingle with family members of the respondent and did not do any house hold work. The appellant's brother along with others came to the respondent's house and picked up quarrel with father of the respondent.

The appellant abused the respondent that he is not a perfect match for her



divorce.

Case of the appellant:

4.The appellant filed counter statement denying all the allegations made against her by the respondent. According to appellant, at the time of marriage, her parents gave 50 soverienngs of gold jewels to her and 10 sovereigns of gold jewels to the respondent. Apart from that as per the demand of the respondent's parents, the father of the appellant gave New Bolero Car to the respondent. Further, 10 sovereigns of gold jewels for Thali function, 10 sovereigns of gold jewels for Valaiyakappu function and for Pongal 10 sovereigns of gold jewels. Apart from other house hold articles like A/C, Almirah and LED TV, Rs.2,50,000/- was given as cash. Inspite of the same, the respondent's family demanded more dowry. The respondent ill-treated the appellant and driven her out of the matrimonial home. After five months of marriage, the appellant conceived. After that he went to Saudi Arabia for job. As per her customs, the parents of the appellant conducted baby shower function and after delivery, the parents of the appellant sent her along with child to the matrimonial home along with her father-in-law.

4(i). The respondent came to India at the time of birth of child and

after 15 days, he went to Saudi Arabia for his job. The appellant was



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decree of divorce on the ground of cruelty and directed the respondent to pay permanent alimony of Rs.5,00,000/- to the appellant.

7. Against the said order dated 06.10.2021 made in H.M.O.P.No.90 of 2018, the appellant has come out with the present appeal.

8. The learned counsel appearing for the appellant reiterated the averments in the counter statement filed in the OP and submitted that the learned Judge having rejected the allegations of cruelty made by the respondent as not proved, erroneously granted divorce in favour of the respondent. Only due to the cruelty meted out by the respondent's mother, she consumed mosquito repellent as the respondent's mother provoked her. The appellant and her family members went to matrimonial home and at that time they were not allowed inside the house. The father of the respondent worked as Sub-Inspector of Police and he influenced the Police to make false complaint against the appellant and her family members. In the enquiry, the appellant expressed her willingness to live with the respondent and respondent's father agreed to set up a nuclear family and the complaint given by the respondent's father was closed. Contrary to the same, the respondent sent notice to the appellant and did not obey the acceptance letter given to the Police. At the time of



marriage, the appellant was given 50 sovereign of gold jewels and 10 sovereigns of gold jewels during valaikappu function and 10 sovereigns of gold jewels was given to respondent. In addition to that Rs.9,00,000/- cash was given to the respondent for purchase of Mahindra Bolero car, Rs.2,50,000/- for purchase of kitchen vessels, 1.5 kg silver pooja vessels and other house hold articles viz., Raja Rani Steel Almirah, LED TV, A/C, Bed, Sofa set, etc,. Except photographs taken at the time of marriage, the appellant is not having any other material to prove the same. The respondent is a BE graduate. The respondent was owner of undivided share of land of 408 sq.ft situated at Vadakuthu, S.P.T. Mani Nagar Extension-2 before filing the OP. After filing OP, the respondent settled the said property on his father. His father is owning five houses. The learned counsel appearing for the appellant further contended that the appellant proved her case of demand of dowry at the time of marriage and demand of dowry even after marriage by examining herself, her father, her brother as R.W.1 to R.W.3 respectively. The learned Judge erroneously did not accept the evidence of appellant and granted divorce to the respondent on the ground that appellant made false complaint of demand of dowry which caused cruelty to the respondent. The respondent influenced the Social Welfare Board and made the petition closed. Closure of petition by the Social Welfare Board is not final and



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the learned Judge erroneously accepted the same and prayed for setting aside the order of the learned Judge and allowing the appeal.

9.The learned counsel appearing for the respondent reiterated the averments in the OP and referred to the impugned order of the learned Judge and contended that the learned Judge has properly appreciated the materials placed before her and allowed the OP. There is no reason to interfere with the order of the learned Judge and prayed for dismissal of the appeal.

10.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent and perused the entire materials on record.

Point for consideration:

(I) Whether respondent is entitled to divorce on the ground of cruelty.

11.From the materials on record, it is seen that the respondent alleged various incidents of cruelty alleged to have been meted out to



him by the appellant including giving a false complaint of demand of dowry against the respondent and his family members. The learned Judge considering the oral and documentary evidence let in before her by the appellant and respondent, held that respondent had given a false complaint of dowry harassment which involves serious implication upon the respondent and his family would amounts to cruelty. It is admitted fact that appellant gave a complaint to the All Women Police Station, Neyveli. After enquiry, the said complaint was forwarded to Social Welfare Board. The Social Welfare Board called upon the appellant and respondent and his family members to appear before it and enquired the complaint given by the appellant. After enquiry, the Social Welfare Board closed the complaint holding that complaint given by the appellant against the respondent and his family members for demand of dowry is not proved. The respondent produced copy of the said order before the learned Judge and marked the same as Ex.P9. The appellant did not dispute the finding of the Social Welfare Board before the learned Judge. In the present appeal, it is the contention of the learned counsel for the appellant that respondent influenced the Social Welfare Board and due to influence, the Social Welfare Board closed the complaint given by the appellant. The appellant after closure of complaint by the Social Welfare Board, did not take any further proceedings before the competent



Criminal Court to prove her allegation of harassment of dowry demand.

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11(i). It is seen from the materials on record that appellant earlier stated that she consumed mosquito repellent due to the dispute between the appellant and respondent's mother as respondent's mother provoked her. But in the complaint given before the All Women Police Station, Neyveli, the appellant has stated that she consumed poison as respondent and his family members demanded dowry. This inconsistent plea taken by the appellant creates suspicion about the alleged harassment due to demand of dowry. The Police enquired the complaint given by the appellant and forwarded the same to Social Welfare Board. It is not in dispute that Social Welfare Board enquired both the appellant, respondent and his family members and closed the complaint as not proved. It is well settled that giving a complaint by one of the partners will not amount to cruelty. Only when it is proved that such complaint is false, it amounts to cruelty. In the present case, from the materials on record, it is seen that respondent's father gave complaint against the appellant, her father and her brother that they are threatening the respondent and his family members. After enquiry of said complaint, only the appellant has given a complaint against the respondent and his family members alleging dowry harassment. As already stated above,



after closure of said complaint, the appellant did not take any further proceedings to prove that the respondent and his family members harassed her by demanding dowry. The learned counsel appearing for the appellant in the appeal contended that the respondent influenced the Social Welfare Board. There is nothing on record to show that such a contention was made before the learned Judge. The learned Judge considering the judgments relied on by the respondent, wherein it was held that giving a false complaint amounts to cruelty, held that appellant had meted out cruelty to the respondent and hence he is entitled to divorce and allowed the OP.

12.From the materials it is seen that admittedly the appellant attempted suicide by consuming All Out Mosquito repellent. At one place, the appellant claims that she attempted suicide because of provocation and instigation of her mother-in-law. In another place she claims that she attempted suicide due to dowry harassment by respondent and his family members. Therefore, she has no consistent stand with regard to cause for taking such extreme step. However, it will be very difficult to live with the person who has suicidal tendency for one reason or another. The respondent is entitled to decree of dissolution of marriage on this ground also. In view of the above well settled judicial



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pronouncements in this issue, there is no error in the order of the learned Judge impugned in the present appeal.

13.As far as return of jewels is concerned, the appellant has filed C.M.P.No.2876 of 2022 to return the articles and cash given by the parents of the appellant to the respondent during the time of engagement, marriage, valaikappu and child's birth. The respondent has stated that appellant has taken away all the jewels and now he is ready to return the house hold articles to the appellant. The appellant failed to prove that respondent is in possession of all her jewels and without any evidence to prove the same, this Court, at this stage in the appeal, cannot issue direction to the respondent with regard to return of jewels. The learned counsel appearing for the respondent contended that as per the order of the learned Judge, the respondent has given Demand Draft for a sum of Rs.5,00,000/- to the appellant towards permanent alimony and the appellant refused to receive the same and filed a memo to that effect. In view of the same, the respondent is directed to send the Demand Draft for a sum of Rs.5,00,000/- to the respondent towards permanent alimony and in case of any refusal by the appellant, the respondent is directed to deposit the sum of Rs.5,00,000/- to the credit of H.M.O.P.No.90 of 2018

on the file of the Family Court, Cuddalore.



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14. With the above directions, this appeal is dismissed confirming the order dated 06.10.2021 made in H.M.O.P.No.90 of 2018 on the file of the Family Court, Cuddalore. Consequently, the connected Miscellaneous Petitions are closed. No costs.

(V.M.V., J) (S.S., J)
12.10.2022

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Index : Yes / No
Internet : Yes / No

To

1. The Judge,
Family Court,
Cuddalore.

2. The Section Officer,
VR Section,
High Court,
Madras.



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V.M.VELUMANI, J.
and

S.SOUNTHAR, J.

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