



C.M.A.(MD)No.139 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 18.10.2022

Delivered On : 21.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.139 of 2010

D.Issac Manuel

.. Appellant /Petitioner

Vs.

1.K.R.Sornabai

2.C.Renganathan (Died)

R2 died and exonerated vide
Court order, dated 23.09.2022)

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 55 of the Indian Divorce Act, against the judgment and decree, dated 17.11.2009, in I.D.O.P. No.98 of 2002, on the file of the District Judge, Kanyakumari at Nagercoil.

For Appellant

: Mr. C.Godwin

For Respondents

: Mr.T.Antony Arulraj for R1

: R1 Died



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the order, dated 17.11.2009, in I.D.O.P. No.98 of 2002, on the file of the District Judge, Kanyakumari at Nagercoil. The appellant herein is the petitioner-husband and the respondents herein are the respondents in the main original petition.

2. A brief substance of the petition filed by the husband (petitioner), in I.D.O.P. No.98 of 2002, is as follows:

2.1. The petitioner is an Advocate. The petitioner and the first respondent married on 14.09.1981 as per the Christian Rites and Customs. After the marriage, they lived in the residence of the petitioner. The first respondent was not willing to attend to the needs of the petitioner. The mother of the petitioner died on 16.11.1998, from then, the behavior of the first respondent entirely changed. The first respondent told the petitioner that she was having affair with the son of her uncle, who was residing in Chennai and that she was not interested in the family life with the petitioner. The petitioner and the first respondent went to various hospitals for medical treatment and that reveals that there is no possibility of the first respondent to get pregnant. The first respondent is having illicit intimacy with the second respondent, who is a neighbour. On 22.03.2001, at about 7.00 pm., the



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brother of the petitioner, by name, Theodore Manuel, saw the first respondent having sexual intercourse with the second respondent. The brother of the petitioner warned the first respondent.

2.2. On 22.03.2001, at about 8.30 pm., when the brother of the petitioner was sleeping in his residence, the respondents jointly poured Kerosene and tried to set him on flames, but, he escaped. On 15.09.2000, the first respondent assaulted the petitioner and he sustained injury. The brother of the petitioner was assaulted by one of the brothers of the first respondent and his henchman, hence, the brother of the petitioner gave a complaint at the Tiruvattar police station. The petitioner sent a notice on 07.01.2002. The first respondent gave a reply notice on 19.01.2002 with false averments. The first respondent also filed a suit in O.S.No.34 of 2002, before the Additional District Munsif, Padmanabhapuram seeking maintenance.

3. A brief substance of the counter filed by the wife (first respondent), in I.D.O.P. No.98 of 2022 is as follows:

3.1. All the allegations are hereby denied. At the time of marriage, it was stated that the petitioner was a Law Graduate, but, it was false. A sum of Rs. 50,000/- was given to the petitioner and 50 sovereigns of gold jewels and house hold articles worth about Rs.50,000/- were given to the first respondent. After the



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marriage, the petitioner sold one of her jewels to meet out the expenditure, for his law examination. The petitioner completed law course only after the marriage, with the help of the money from the brother of the first respondent. The brother of the first respondent also executed a gift deed regarding a shop at Kaliakkavilai, in favour of the first respondent. By selling all the jewels of the first respondent, the petitioner became an Additional Public Prosecutor. The first respondent was sincerely attending all the needs of the petitioner. After the death of the mother of the petitioner, the petitioner changed. In the original suit, the petitioner has stated that the first respondent was having an affair with one Nagamani and now he introduced one another person-Nesamony. The allegations are false. Both the petitioner and the first respondent visited some hospitals for consultation on fertility issues, but, no special treatment was given. The second respondent is a close relative of the petitioner and the first respondent has no intimacy as alleged in the petition. The allegation that the first respondent poured kerosene on the brother of the petitioner, and attempted to set him fire is utter false. It is also false to state that the first respondent assaulted the petitioner. The first respondent was not aware of any criminal case between the petitioner and her brother. The notice issued by the petitioner was suitable replied.



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3.2. It was the petitioner, who is having illicit intimacy with one Josephin Jeya and started to ill treat the first respondent and he stopped providing anything to her and that he removed all the movable articles. The petitioner misused his official position and he attempted to drive the first respondent from the matrimonial home by force and with the help of police. Hence, the first respondent was forced to file a suit in O.S.No.34 of 2002 on the file of the District Munsif, Padmanabhapuram, claiming maintenance and the suit is still pending. This petition was filed without any reasonable grounds. The petition to be dismissed.

4. 2 witnesses were examined and 9 documents were marked on the side of the petitioner. 2 witnesses were examined and no document was marked on the side of the respondents. The divorce petition was dismissed by the trial Court.

5. Against the order, the husband – appellant has preferred this Appeal, on the following grounds:-

The trial Court failed to appreciate that the first respondent had committed adultery and failed to consider that the first respondent treated the appellant with cruelty. The trial Court failed to give any reason for discarding the evidence P.W.2, who is the brother of the appellant. The trial Court failed to consider that the appellant and the first respondent were living in the same house and that P.W.2 has



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seen the adultery committed on 22.03.2001. The trial Court failed to consider that 22.03.2001, the first respondent and the second respondent tried to pour kerosene on P.W.2. The trial Court failed to consider that the first respondent assaulted the appellant on 15.09.2000, the trial Court failed to consider that P.W.1 and P.W.2 did not file any complaint on 22.03.2001 and on 15.09.2000.

6. On the side of the appellant, it is stated that the appellant and the first respondent were residing separately for the past 21 years, keeping the marriage inforce is causing mental agony. The husband is aged about 74 years and the wife is aged about 65 years and prayed that the marriage to be dissolved.

7. On the side of the appellant, a judgment of this Court, in **C.M.S.A. Nos.18 and 19 of 2013**, in a case of **Anandakrishnan V. Pushpalatha**, dated **22.02.2021**, is cited, wherein, this Court has granted divorce in the case of a couple, who did not live together for a period of 15 years.

8. On the side of the appellant, a judgment of the Chhattisgarh High Court reported in II-2022-DMC-546 (DB) (Pritam Lal Sahu V. Kalpana Sahu) is cited, wherein, a separation of 12 years was considered by the High Court for granting resolution of marriage.



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9. Another judgment of the Alahabad High Court reported in ***II-2020-DMC-42 (DB) (Aayush Rastogi V. Principal Judge, Family Court, Lucknow)*** is cited, wherein, the High Court as follows:-

“35. Keeping in view the aforesaid as also the observations made by the Apex Court, quoted hereinabove, for passing the decree of divorce on the ground of irretrievable breakdown of marriage, we are of the opinion that there is no likelihood of the appellant and the respondent living together and for all practical purposes there is an irretrievable breakdown of marriage and matrimonial bond is beyond repair and there is no chance of its being retrieved and the relations between the parties are sufficiently spoiled and therefore, no fruitful purpose would be served in maintaining the matrimonial relations between the parties, accordingly we are of the view that on the ground of irretrievable breakdown of marriage, the appellant is entitled for relief of dissolution of marriage.”

10. On the side of the first respondent-wife, it is stated that the appellant and the first respondent were married in the year 1981. Till 2001, both of them lived together, it was the appellant, who had illicit intimacy with one woman ,, even before his marriage. The allegations made by the appellant were not proved by the appellant. The appellant cannot take advantage of his own fault, it was the appellant, who failed to take steps for re-union.



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11. A judgment of this Court reported in **2020-SCC-online-22592** (**N.Mani V. Alphonsa**) is cited, on the side of the first respondent, wherein, it is stated as follows:-

“26 . Though the appellant and the respondent have been living apart from each other for over a period of 11 years and the marital chord may have weakened at this point of time with the efflux of time, we cannot grant divorce. Even if the marriage may have irretrievably broken down due to the pendency of the proceedings before the Family Court, it was at the behest of the appellant and therefore appellant cannot take advantage of his own mistakes. Further, irretrievably breakdown of marriage is not a ground for granting divorce under the provisions of the Indian Divorce Act, 1869.”

12. Only the Hon'ble Supreme Court is having the power to grant divorce on the ground of irretrievably broken. The high Court or the Civil Court has no such power. A judgment of the Hon'ble Supreme court reported in **2009-10-SCC-415** (**Anil Kumar Jain V. Maya Jain**) is cited.

13. It is seen that the brother of the appellant has not filed any complaint against the first respondent, regarding the attempt of murder. The appellant has not filed any complaint against the wife, for assault, when he sustained injury. There is



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no document to prove that the appellant has undergone treatment for the injuries sustained by him, due to the assault. No other witness was examined on the side of the appellant, to prove the injuries. The divorce petition was filed by the husband and it is the duty of the husband, to prove the allegations mentioned in the petition.

14. It is seen that the allegations are not proved, the medical records were not filed. No other independent eye witness was examined, except the brother of the appellant. Hence, it is decided that the allegations stated are not proved.

15. In the above circumstances, it is decided that there is nothing sufficient enough to interfere in the orders of the trial Court. The appeal is dismissed and the order of the trial Court is hereby confirmed. No costs.

21.12.2022

Index : Yes/No
Internet : Yes/No
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R. THARANI, J.

Ls

To

- 1.The I Additional District Judge,
Tirunelveli.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.139 of 2010

21.12.2022