



C.M.A. Nos.2320/10 – 3471/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.10.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.A. NO. 2320 OF 2010

AND

C.M.A. NO. 3471 OF 2019

Chandramohan

..Appellant in both appeals

- Vs -

Amsa

.. Respondent in both appeals

C.M.A. No.2320 of 2010 filed under Section 28 of the Hindu Marriage Act against the fair and decretal order of the Addl. District Judge, Puducherry at Karaikal, dated 5.2.2010, made in M.O.P. No.15/2008.

C.M.A. No.3471 of 2019 filed under Section 28 of the Hindu Marriage Act against the decree and judgment in H.M.O.P. No.181/2012 from the Court of Subordinate Judge, Ranipet.

For Appellant : Mr. A.Arunbabu

For Respondent : Mr. R.Natarajan



C.M.A. Nos.2320/10 – 3471/2019

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COMMON ORDER

The two civil miscellaneous appeals have been directed against the judgment and decree in M.O.P. No.15/2008 on the file of the Addl. District Judge, Puducherry, filed by the appellant in CMA No.2320/2010 and the judgment and decree in H.M.O.P. No.181/2012 passed by the Subordinate Judge, Ranipet, filed by the appellant in CMA No.3471/2019.

2. For the sake of convenience, the appellant and respondent in both the appeals would be referred to as husband and wife. The said civil miscellaneous appeals preferred by the husband, against the negation of his prayer for grant of divorce and allowing of the restitution of conjugal rights, by the respective courts are put in issue in the present appeals.

3. The facts, as has been narrated by the appellant, which are culled out in a nutshell are as under :-



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The marriage between the husband and wife was solemnised as per Hindu rites and customs on 17.5.2002 and they started their matrimonial life at Karaikal. The husband was employed at Karaikal, while the wife was not employed. However, after a period of time the spouses were living together, rift started between the spouses and the wife was left at the parental abode by the husband and the husband left to Andhra Pradesh, where he was employed. Thereafter, the husband and wife did not unite in the matrimonial life and by war of words, which escalated to various proportions between the couples, with the husband accusing the wife of being medically indisposed to lead a matrimonial life and the wife accusing the husband of being not inclined to lead a happy matrimonial life, resultantly, the non-joining of the spouses led the wife to resort to knocking the doors of the Superintendent of Police, Vellore for intervention and reunion of the couples. However, the intervention of the police heightened the issue when the husband was called upon for enquiry at Andhra Pradesh, which act, according to the husband was cruelty meted out to by his wife and the mental cruelty pushed the husband to file M.O.P. No.15/2008 seeking divorce on the ground of desertion and cruelty. Pending the said divorce petition, inspite of efforts, as amicable



C.M.A. Nos.2320/10 – 3471/2019

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settlement for reunion could not be found out, the wife filed H.M.O.P. No.181/2012 seeking restitution of conjugal rights before the respective Courts, as stated above and both the petitions having come to be dismissed, the present appeals have been directed against the said orders.

4. Learned counsel appearing for the husband submitted that inspite of the best efforts of the husband to settle the issue for leading a peaceful matrimonial life, the wife along with their parents were never inclined for a cordial relationship, the outcome of which was the filing of the complaint before the All Women Police Station implicating the husband as the aggressor. It is the further submission of the learned counsel that the resultant scenario was that the constant threats given by the police drove the husband to seek anticipatory bail from this Court and only upon obtaining anticipatory bail, the threats subsided. It is the further submission of the learned counsel the act of the wife and their parents had damaged the reputation of the husband before his office and also in the society at Andhra Pradesh, which has caused mental cruelty to the husband and inspite of the best efforts taken by the husband for a reunion prior in point of time to the filing of the complaint, the desertion of



C.M.A. Nos.2320/10 – 3471/2019

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the wife by returning to her parental home without the concurrence of the husband is a clear act, which shows that the wife was not inclined to live along with the husband and, therefore coupled with the attitude of the wife in not coming to live jointly and also causing mental cruelty to the husband by destroying his reputation among his colleagues in the office as also in the society and driving the husband to seek anticipatory bail, the husband was driven to file the divorce petition, as there is no compatibility between the husband and wife for further continuance of matrimonial life. The cruelty meted out by the wife in the form of filing complaint and making the police to question the husband, even within his official premises, necessitated the filing of the petition for divorce invoking the ground of cruelty. However, without considering the act of cruelty imposed upon the husband by the wife, the petition for divorce has been dismissed, without any proper reason and the same requires to be interfered with.

5. It is the further submission of the learned counsel that the act of the wife and his in-laws in precipitating the issue, without amicably settling the same by advising the wife to live in peace with her husband at Andhra Pradesh



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is a clear establishment of the irretrievable breaking down of the marriage, which cannot be patched up and the mediation conducted for settling the issue also having failed, divorce ought to be granted on the ground of irretrievable breaking down of marriage and the grant of restitution of conjugal rights is wholly perverse. On this ground as well, the present appeals filed by the husband deserve to be allowed.

6. In support of the aforesaid submissions, learned counsel for the husband relied upon the following decisions :-

- i) *A.R.Subramanian – Vs – Amutha (2018 (6) MLJ 92);*
- ii) *Sivasankaran – Vs – Santhimeenal (2021 SCC OnLine SC 702);*
- iii) *K.Srinivas Rao – Vs – D.A. Deepa (2013 (5) SCC 226);*
- iv) *Naveen Kohli – Vs – Neelu Kholi (2006 (2) LW 606);*
- v) *Smt. Mayadevi – Vs – Jagdish Prasad (2007 (4) LW 249); and*
- vi) *S.Murugan – Vs – Vaikunda Lakshmi (1998 (2) LW 100)*

7. Per contra, learned counsel appearing for the wife submits that the husband was not having cordial relationship with her since their marriage, which was attributed by her mother-in-law to certain factors such as the



C.M.A. Nos.2320/10 – 3471/2019

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demise of his father, sister, etc., but the basic treatment meted out by the husband to his wife itself was lacking. It is the further submission of the learned counsel that it was the husband, who took his wife to her parental home and left her and inspite of the continuous efforts made by her and her parents to enable her join her husband, resulted in vain, as the husband, who was working in Andhra Pradesh did not take any fruitful steps to have unison with his wife. Only as a last resort, to find her lost life, the wife gave a complaint before the Superintendent of Police, Vellore, that too for the purpose of enabling her join her husband. It is therefore the submission of the learned counsel that the act of the wife in resorting to acts of mediation, even through the police officials, to join her husband cannot be brought within the ambit of cruelty u/s 13 of the Hindu Marriage Act. The steps taken by the wife in accordance with law, even by approaching the law enforcing agency, are only for the purpose of safeguarding her family life and merely because the police have visited the husband and enquired him and taken steps for unifying them and on account of apprehension, the husband, if approached this Court to obtain anticipatory bail, that cannot be termed to be cruelty meted out by



C.M.A. Nos.2320/10 – 3471/2019

the wife to her husband warranting the grant of divorce. Therefore, rightly, the court below had dismissed the case of the husband seeking divorce.

8. Insofar as the contention with regard to irretrievable break down of marriage is concerned, it is the submission of the learned counsel that the petition filed by the wife for restitution of conjugal rights initiated in the year 2012, inspite of the husband seeking divorce, in the petition filed by the husband in the year 2008, clearly establishes the fact that all along, the wife was intent on protecting her family life and to live along with her husband and for reasons otherwise than cruelty, the husband is seeking divorce and that cannot be termed to be an irretrievable break down of marriage, coined by the Supreme Court as a ground for divorce. The intention of the parties to the proceedings for divorce is a predominant factor, which has to be taken into account for the purpose of establishing irretrievable break down of marriage and the fact that all along the wife had been taken steps to join the husband, inclusive of giving the police complaint, which is only for the limited purpose, clearly show that the wife had never deserted her husband. All these aspects have been clearly appreciated by the Court below and the petition for



C.M.A. Nos.2320/10 – 3471/2019

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restitution of conjugal rights has been rightly allowed by the court below, which does not require any interference at the hands of this Court.

9. In support of the aforesaid submissions, learned counsel for the wife placed reliance on the following decisions :-

- i) *S.Hanumantha Rao – Vs – S.Ramani (1999 (3) SCC 620); and*
- ii) *C.R.Chenthilkumar – Vs – K.Sutha (2008 (2) CTC 745)*

10. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

11. Before starting to discuss the issue, it would be more apt to start the discussion with a couplet from Thirukkural -

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???????? ?????? ???

A freehand translation – meaning of the above couplet is –



C.M.A. Nos.2320/10 – 3471/2019

WEB COPY

If there is a bond of love between the husband and wife in a life lead with morality, then the character and benefit in the home life would best be reaped by both.

While love and affection in matrimony flows from the heart, the ego flows from the brain. Once the brain is allowed to take control of the heart, anarchy reigns in the family and there is love lost in the said family. Only to instill in the minds of the spouses the manner in which they should lead a life, so that the life is happy, enduring and fulfilled, the great Tamil Poet Thiruvalluvar had coined the above couplet.

12. The said factum being the basis of a happy matrimonial life, the whole genesis of the present case hinges upon the cruelty, alleged to have been meted out to the husband by the wife which is the cause for filing the petition for divorce. The decision that is given in the said appeal relating to divorce would be the stone on which the edifice could be built for deciding the relief of restoration of conjugal rights.



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13. The case for divorce filed by the husband is premised on the cruelty meted out by the wife to her husband in the form of desertion of her husband by leaving her matrimonial home and also filing of complaint at the police station, which resulted in the police enquiring the husband at his office, which had caused great embarrassment to the husband at his work spot, thereby, tarnishing his image, which could not be redeemed and, therefore, the said act actuated the filing of a petition for divorce.

14. A perusal of the averments of the parties reveal that a complaint was lodged before the Superintendent of Police, Vellore, on behalf of the wife by her father, for the purpose of reunion of the spouses, which complaint was forwarded to the All Women Police Station, Ranipet and based on the said complaint, enquiries were conducted resulting in the police trying to bring about peace between the husband and wife for a peaceful reunion.

15. The whole claim of the husband is that the said complaint had caused grave prejudice to the husband and the said act had tarnished his reputation and besmirched his status amongst his office colleagues and the



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threatening acts of the police had pushed the husband to seek asylum before this Court by seeking anticipatory bail and all put together had caused severe mental cruelty, which is a ground for divorce and invoking the same, the husband had filed the petition for divorce, as the wife was not concerned about the image of the husband in the eyes of the public.

16. It is to be pointed out that normally the elders in the family try to solve disputes that arise out of matrimonial discord between the spouses on account of varying factors through a process of mediation. Only with the said object, in family matters mediation is resorted to at the first instance and in this case as well, mediation has been resorted, but to no avail. However, what is to be noted here is the fact that consequent upon the husband filing the petition for divorce, the wife had filed the petition for restitution of conjugal rights, which clearly establish her continued affection for her husband.

17. Merely because a complaint has been given to the police and enquiries were made by the police authorities cannot be taken to mean that it is done by the other spouse to cause calculated damage to the reputation and



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status of the other spouse in the society. In the present day scenario, the intervention of elders in matrimonial matters is dwindling, as in many cases, elders also are the cause of such disputes and, therefore, the intervention by elders or other reputed individuals in the society is not normally taken. This is more prevalent in the present days and is more on account of the egoistic attitude of the individuals and only with the avowed object, mediation is resorted by the judicial system before any further adjudication is made, as family matter is not a matter, which is to be adjudicated on the touchstone of the legal provision, but is to be done more on the basis of the mindset of the individuals and understanding the individual difference of opinion between the spouses.

18. The law enforcing agency is a platform at the first instance which is resorted to for the purpose of bringing peace in the family. However, in many cases, irrelevant provisions are resorted to and a complaint is registered, which literally destroys any hope of reunion between the warring couples. But all complaints cannot be gauged on the same lines as one trying to offend



the other spouse and it is to be looked at case wise and not on a general perception.

19. In this regard, a careful perusal of the averments, as noted above, reveals that the complaint has been given for the purpose of mediation to bring about a reunion between the spouses. Merely because enquiries were made at the office of the husband or that the husband was called for enquiry cannot be the basis to term the act of the wife in giving the complaint as an act of cruelty. Further, the apprehension of the husband who had rushed to this Court to obtain anticipatory bail cannot be the basis for this Court to decide that there was cruelty by the wife, which necessitated the husband to obtain anticipatory bail. It is not the case of the husband that any complaint with regard to dowry harassment or any other form of harassment, which attracts penal consequences were levelled by the wife against the husband. Just because a complaint was given for reunion cannot be taken to mean that it has penal consequences, thereby, the reputation of the husband had dwindled in the society.



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20. Not all roads lead to Rome. Likewise not all complaints are given with ulterior motive to tarnish the image of the other spouse. It is the duty of the courts to scan through all the materials to find out the motive behind the complaint before being swayed one way or the other. The courts cannot be guided by the idiosyncrasies of the parties, but has to deal with the issue on a balanced scale. Likewise, the present appeals have to be weighed on the same scale to find out the stand of the parties.

21. In this regard, useful reference can be had to the decision of the Apex Court in *Hanumantha Rao case (supra)*, wherein, in identical circumstances, the Supreme Court had dealt with the said issue as under :-

“11. The last act of the respondent, which according to the learned counsel for the appellant, amounts to mental cruelty is that she lodged a complaint with the Women Protection Cell, through her uncle and as a result of which the appellant and the members of his family had to seek anticipatory bail. The respondent in her evidence stated that she had never lodged any complaint against the appellant or any members of his family with the Women Protection Cell. However, she stated that her parents sought help from Women Protection Cell for reconciliation through one of her relative who, at one time, happened to be the Superintendent of Police. It is on the



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record that one of the functions of the Women Protection Cell is to bring about reconciliation between the estranged spouses. There is no evidence on record to show that either the appellant or any member of his family were harassed by the Cell. The Cell only made efforts to bring about reconciliation between the parties but failed. Out of panic if the appellant and members of his family sought anticipatory bail, the respondent cannot be blamed for that. Thus, we are of the opinion, that representation made by the parents of the respondent to the Cell for reconciliation of the estranged spouses does not amount to mental cruelty caused to the appellant."

(Emphasis Supplied)

22. The facts in the present case are also identical to the case on hand.

In the case on hand, to bring about a reconciliation and reunion between the spouses, the father of the girl, viz., the wife, had approached the Superintendent of Police and lodged a complaint, which has been referred to the All Women Police Station. It is not the case of the husband that any penal consequences were sought for against the husband, but it is a mere complaint on which the law enforcing agency had acted, but for reasons best known to the husband, he had rushed to this Court to obtain anticipatory bail, which



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cannot be put against the intention with which the complaint had been lodged.

23. It would be the endeavour of every parent to see that their children lead happy and peaceful matrimonial life. No parent of normal thinking would yearn to have the matrimonial life of his daughter blown to smithereens by his very own act. All the steps that a parent takes, in the normal course of his duties to his children would be only for the welfare of his children and would be for no other purpose.

24. In the case on hand as well, the father of the girl, viz., the wife, had approached the Superintendent of Police to seek his indulgence to have the matrimonial life of his daughter mediated by a person of authority so that good sense will prevail upon the warring spouses to shed off their ego and come to terms with life. The procedure of mediation, though had not been adverted to, but the steps taken by the father was for the purpose of mediating the issue through the authority of law and it could not be construed



C.M.A. Nos.2320/10 – 3471/2019

that the said act is for the purpose of imposing upon his son-in-law his power, unmindful of the fact that his daughter's life would be affected.

25. If the rightful step of a father in soliciting the assistance of the law enforcing agency for the purpose of mediating the issue and if the same is allowed to be brought within the ambit of cruelty, then the Courts would be flooded with litigation all through and for all the disputes between spouses and other members in the family, having a penal flavour in it, the matrimonial ties between the spouses would have to be broken down by handing divorce to the warring spouses on the ground of cruelty. Such a finding, if given, would lead to utter chaos in the society and the sanctity of the familial bond would be defeated and would be to a back seat to which the Courts should never be a party at the first instance.

26. Divorce amongst the couple should never be resorted to, so long as good sense prevails over the humans. The Courts should be very circumspect while granting divorce and that has been the mantra of the courts time immemorial insofar as divorce cases are concerned. Even the Supreme Court



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seldom invokes its inherent power under Article 142, but in rarest of rare cases, where there is irretrievable break down of marriage. But the same should be established through materials, which would leave no room for any conciliation between the parties. Even if there is an iota of chance that the mindset of the spouses would change by passage of time, as time being the best healer, which teaches the humans an umpteen lot of lessons, the Courts should not be a party to granting divorce. The above proposition has been time and again stressed in the various decisions propounded by the Courts.

27. In the case on hand, the act of the father, on behalf of his daughter, viz., the wife, filing the complaint with the police, which has resulted in a process being undertaken by the law enforcing agency to mediate between the spouses could not be brought within the label of cruelty, as advanced as a contention on behalf of the husband to sever the matrimonial knot. As the time-tested saying goes *“Marriages are made in Heaven”*, it should not be broken by mere mortals by the whip of the legal wand, lest the saviour would not be kind to mankind. Therefore, this Court is not inclined to accept the version of the husband that on the ground of cruelty, the matrimonial



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relationship should be cut loose to enable the spouses go their way, as the irretrievable breakdown of marriage has not been established so also the act of cruelty on the part of the wife. The decision in *Hanumantha Rao's case* stands squarely attracted and not only the decision in the said case ties the hands of this Court, but also the good sense of this Court prevails upon it to sway its decision in favour of the wife.

28. Insofar as the decisions relied on, on behalf of the husband are concerned, in all those cases, the act of cruelty has been established and the said cruelty, is really cruelty in the sense of its meaning and not in the sense of the word. Further, irretrievable breakdown of marriage has also been established in the said cases. However, in the case on hand, as discussed above, neither the act of cruelty portrayed by the husband would fall within the parameters of cruelty envisioned under the provisions of Section 13 of the Hindu Marriage Act nor the irretrievable breakdown of marriage has been established in the manner known to law. In such a circumstance, the relief of divorce sought for by the husband cannot be granted.



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29. Further, as aforesaid, the wife still wants to unite with her husband, inspite of the sourness between the spouses, which is a clear indication that the wife still has an open mind that a day will come when the spouses will unite. On the strength of the conviction of the wife, the court below had thought it fit to allow the petition for restitution of conjugal rights, which does not suffer any perversity or illegality. All the avenues should be kept open for the spouses to unite and to keep the matrimonial relationship fly high and on that basis, this Court is of the considered view that the order passed by the court below with regard to granting the wife the relief of restitution of conjugal rights does not require any interference.

30. In view of the discussion above, the orders passed by the respective courts below in the petition for divorce as well as in the petition for restitution of conjugal rights does not suffer any perversity or illegality and, therefore, the said orders does not require any interference.

31. In the result, both the appeals fail and, accordingly the same are dismissed. However, there shall be no order as to costs.



C.M.A. Nos.2320/10 – 3471/2019

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32. Before parting with the case, this Court would like to caution the human folk that matrimonial affliction should be allowed to heal with the passage of time and in the spur of the moment, the spouses should not let the brain take over the heart in a direct confrontation, in which always the brain seems to wins, but nevertheless the pain and endurance of the win achieved by the brain is faced by the heart throughout the life of the individual. Good sense in the individual is the need of the hour and unless a person settles down in times of turmoil and has a deep thinking, the things, which he does would always be on the wrong side. In such scenarios, it is for the elders to give a caring and affectionate shoulder to the individuals to make them realise the sanctity behind the matrimony bond, which seldom severs.

11.10.2023

Index : Yes / No

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C.M.A. Nos.2320/10 – 3471/2019

To

1. Addl. District Judge
Puducherry @ Karaikal.

2. The Subordinate Judge
Ranipet.



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C.M.A. Nos.2320/10 – 3471/2019

M.DHANDAPANI, J.

GLN

**C.M.A. NO.2320 OF 2010
AND
C.M.A. NO. 3471 OF 2019**

11.10.2023



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C.M.A. Nos.2320/10 – 3471/2019