



C.M.A.No.1916 of 2000

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2023

CORAM

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.1916 of 2000

Kalaimathy

... Appellant

..Vs..

Manila Gandhi

... Respondent

Prayer : Civil Miscellaneous Appeal has been filed under Section 20 of Hindu Marriage Act, 1955, against the fair and decreetal order passed by the Sub Judge, Chidambaram in H.M.O.P No.13 of 1994 dated 30.04.1998 dissolving the marriage held on 02.09.1990 between the appellant and the respondent.

For Appellant : Mr.G.Rajkumar

For Respondent : Mr.G.K.Gaarkey Chandhar



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J U D G M E N T

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This Civil Miscellaneous Appeal is filed by the Wife, Kalaimathy aggrieved by the fair and decreetal of the Sub Court, Chidambaram, in H.M.O.P. No. 13 of 1994, thereby allowing the petition for divorce filed by the respondent/husband, Manila Gandhi, on the ground of adultery, desertion and cruelty under Sections 13 (1) (i), 13(1) (a), and 13(1)(b) of the Hindu Marriage Act, 1955.

2. The case of the respondent/husband is that the marriage between the parties was solemnized on 02.09.1990 at Ramadoss Pillai Kalyana Mandapam, North Car Street, Chidambram; at the time of marriage, the wife was doing her M.Sc course (zoology) in Annamalai University and the husband was working as Geologist in Mineral Exploration Corporation Ltd., at Warangal District in Andhrapradesh; after the marriage, they lived for about a month at Warangal District; the respondent-husband was transferred to Orthanadu in Tanjore District in the month of October 1990; his mother was then residing at Sivasakthi Nagar in the periphery of



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Chidambaram; since the wife wanted to pursue her M.Sc degree by staying in the Annamalai University Hostel, the husband consented for the same; he used to visit Chidambaram in the weekends and during such visits of the husband, the wife also used to come from her hostel and stay with her husband in her mother-in-law's house; the aforesaid arrangement continued and the respondent's life was peaceful for the first few months; thereafter, the wife stopped coming to her mother-in-law's house during the weekends; when the respondent went in search of his wife, she was absent in her hostel room; after enquiries, he found that she was frequently visiting the house of an English lecturer by name Mr.James; the respondent-husband warned the appellant-wife not to stay in the house of others at odd hours; but she did not care to heed the petitioner's advise and continued her activities.

3. It is the further case of the respondent-husband that he found her wife was moving very intimately with her elder sister's husband one Dhakshinamoothy; whileso, both the husband and wife went to Kollunmangudi on 26.04.1991 to attend the marriage of her younger sister on 28.04.1991 at Sirkali; after the marriage, the wife refused to return with



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the husband and went to stay with the above said Dakshinamoorthy and family; thereafter, on 02.05.1991, when the husband visited his wife's house unexpectedly, he found the said Dakshinamoorthy and his wife were lying fully naked on a cot and engaged in an act of sexual intercourse; he reported the above said incident to his father-in-law who chided his daughter and the said Dakshinamoorthy; her father also pleaded and begged the respondent to forgive her and not to publicize the incident; she also requested the respondent to forgive her; after completion of her degree course, the wife did not come to Orthanadu to live with the respondent-husband and instead, she asked him to come to Kollumangudi during the week ends; though the respondent did not relish the idea, he obliged his wife, in order to avoid tensions; on 28.07.1991, the respondent saw his wife and a neighbour by name Natarajan having intercourse in the latter's house; the respondent's aunt Tmt.Maheswari also witnessed the same; her father refused to come to the place of occurrence; the wife and the said Natarajan ran away on seeing the respondent; the father refused to come out of his house and they started accusing the respondent of being a suspicious, old fashioned and narrow minded man; thereafter, the respondent left to



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Chidambaram along with his aunt; subsequently, the respondent issued a legal notice dated 02.09.1991 to his wife demanding divorce; she also sent a reply dated 7.10.1991 and filed an application for maintenance in M.P No.3 of 1991 under Section 125 Cr.P.C before the Judicial Magistrate, Myiladuthurai; thereafter, the husband also filed O.P No.58 of 1992 on the file of Subordinate Judge, Myiladuthurai, seeking restitution of conjugal rights; the husband offered to live with his wife even in his counter to M.C No.3 of 1991, but the wife refused to resume cohabitation with the husband; the wife is in possession of jewels, dresses and valuables.

4. It is further stated that after filing of O.P No.58 of 1998, the wife lodged a false complaint as against the husband with a view to harass and defame him to his higher officers at M.E.C.L falsely alleging that he came to the wife's house on 12.04.1991 and carried away all her valuables; she wrote several letters to the husband and his relatives both in her own name and in other names accusing and scolding the husband and his family in filthy, profane and nasty words and also alleging that the husband was insane, suspicious and a man having incestuous relationship with his female



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relatives besides several other unbearable things; the wife also gave a false complaint to the Superintendent of Police, Nagapattinam alleging dowry harassment, torture and cruelty on the part of the respondent-husband and also roped the respondent's brothers and family members in the same; the respondent-husband suffered great mental strain and tension due to the aforesaid complaints and conduct of the appellant-wife and suffered a lot; in the mean time, both the husband and wife filed a compromise memo in M.C No.3 of 1991 and a maintenance of Rs.350/- per month was awarded to the wife; the application for restitution of conjugal rights in O.P No.58 of 1992 was dismissed for default on 18.02.1993; he preferred an application in I.A.No.96 of 1993 to restore the said application and it was also dismissed on 24.01.1994; thereafter, on 14.02.1994, when he approached the wife and her father to arrange for a divorce by mutual consent, they compelled and coerced him to sign in 5 blank white papers and except with no other option he signed in the blank papers; the wife also slapped the husband on his face and asked him to get out; later, the respondent-husband lodged a police complaint and thereafter filed a petition for divorce.



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5. The appellant-wife filed a counter denying all other allegations made in the affidavit except those that are specifically admitted by her. It is contended by the appellant-wife that the respondent-husband was not behaving properly and the marital life was not peaceful from the beginning; he tortured the appellant mentally and physically demanding more dowry; the respondent used to doubt the appellant and link her with whomsoever happened to meet and he behaved more like a psychiatric patient; on account of this, she was unable to pay attention even to her studies; on 12.04.1991, the respondent with his office assistant Sachidanandan went to the appellant's parents house at Koolumangudi in a office jeep and took away all the valuables including B.Sc., degree certificate belonging to the respondent; thereafter, the respondent sent a registered lawyer's notice demanding divorce on untenable grounds citing so many false incidents; for which the appellant replied suitably; hence she filed a petition for maintenance; in order to avoid the payment and maintenance, the respondent filed a petition for restitution of conjugal rights; finally, monthly maintenance of Rs.350/- was ordered; in the meanwhile, on 15.8.1993, a compromise was entered between the parties and arrived at a decision for



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reunion; the respondent accepted his faults and got apology for his indecent action against the appellant-wife and requested the appellant's father to forgive him for his act and allowed them to live jointly; accordingly, the respondent and appellant were living at Kollumangudi from 15.08.1993 to 03.09.1993; later, on 03.09.1993, he went out of the house without any information, but not turned up; in such circumstances, the respondent issued a notice to the appellant stating that as if he came to the appellant's parents house on 14.02.1994 and he was threatened by her family members and obtained signature on blank papers etc., ; she learnt that the respondent is arranging for a second marriage stealthily with one Indira Gandhi for the purpose of getting more dowry.

6. Since the efforts of counseling the parties and resolving the matrimonial conflict did not yield any positive result, the Subordinate Court had no other option than to proceed with the trial. The husband examined himself as PW-1 and his aunt Maheswari was examined as PW-2 and Exs-P1 to P25 were marked on his side. The wife examined herself as DW-1 and other two witnesses were examined as DW-2 and DW-3 and



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Exs.R1 to R23 were marked on her side.

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7. The Subordinate Court, after considering the pleadings of the parties and the evidence on record, held that non-consummation of marriage even during the initial period of few months of living together by the parties amounted to adulterous, desertion and cruelty on the husband. The trial court found that after receipt of legal notice only, the wife preferred a police complaint against her husband alleging that he harassed her by demanding dowry and due to the said complaint, the husband got depressed. Further, the trial Court observed that after the panchayat held between both the parties, the respondent-wife had not come forward to live with her husband and by her act, she caused depression to the husband and she was living separately without any reason. Hence, the husband has filed the divorce petition on the grounds of adulterous, desertion and cruelty. Finally, the trial Court, based on the said complaint and maintenance case came to a conclusion that in order to get money from the husband and with an intention of keeping him restless, the wife is acting and accordingly, the prayer of the respondent/husband for divorce was granted. Aggrieved by the



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same, the present appeal is filed before this Court.

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8. Heard Mr.G.Rajkumar, the learned counsel for the appellant and oMr.G.K.Gaarkey Chandhar, the Learned Counsel for the respondent.

9. The Learned Counsel for the appellant would submit that the Court below has erroneously held that the appellant-wife had committed adultery solely on the basis of evidence of PW2, who is close relative to the respondent-husband (PW1) who had admitted in her cross examination that she did not tell anybody about the adultery committed by the appellant-wife and she was revealing the said alleged act of adultery only in the court for the first time and in any event, her evidence has not been corroborated by other evidence. The plea of adultery was not taken in earlier proceedings by the respondent-husband in the maintenance proceedings as well as in the petition filed by him for restitution of conjugal rights and it is clear that the grounds of adultery had been raised in this proceedings alone for the purpose of this case. The respondent-husband alone treated the appellant-wife with cruelty in many ways. He would further submit that the Court



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below had committed legal error by entertaining the original petition without impleading the alleged adulterers as a party to the proceedings and as such, the entire proceedings on the ground of adultery is liable to be set aside. In order to strengthen his argument, the learned counsel has relied on the judgment rendered by Division Bench of High Court of Andhra Pradesh, in the case of **Mirapala Venkata Ramana vs. Mirapala Peddi Raju** reported in **2000 (2) A.P.L.J. 67**.

10. The Learned Counsel for the respondent/husband would submit that from the date of marriage, the wife was not willing to live with the husband, she was never willing for reunion and already the husband is greatly prejudiced by her illegal conduct by keeping him at bay from 1990 till now. He would submit that in the facts and circumstances of this case, no fault can be found in the Judgment and Decree of the Subordinate Court.

11. I have considered the submissions made on behalf of either side and the pleadings of the parties and the evidence on record. Admittedly, the appellant and the respondent, after the marriage was solemnized on



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02.09.1990 at Ramadoss Pillai Kalyana Mandapam, North Car Street,

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Chidambram, as per the Hindu rites and customs, lived together only for few months. During that period, it is the specific case of the respondent-husband that the appellant had sexual relations with one James, Dakshinamoorthy and Natarajan. PW2 is a close relative of the respondent-husband and she deposed that the appellant-wife had sexual relationship with three persons. In such circumstances, the husband ought to have impleaded the said persons to prove the allegation of adulterous act committed by his wife. But, he has failed to implead them as necessary parties. The Court below without properly verifying the records came to a wrong conclusion that the appellant-wife was involved in adulterous acts. As rightly pointed out by the learned counsel for the appellant, in a case for divorce based on adultery, the adulterer is a necessary party and ought to be made as respondent in the instant case. But the respondent-husband had failed to implead the alleged adulterers and as such the O.P is hit by non-joinder of necessary party. The order of divorce granted without impleading the adulterers named by husband is not sustainable and the same is liable to be set aside. Therefore, the finding of the Subordinate Court on the ground



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of adultery is not sustainable. However, on the ground of desertion and cruelty, a perused of the materials available on record would reveal that the respondent has proved the case against the appellant and even the appellant could not print out any error in the appreciation of evidence on the aforesaid grounds.

12. For the reasons aforesaid, the finding with regard to adultery is set aside, however, on the other grounds, the respondent has established his case and therefore, the fair and decreetal order dated 30.04.1998 passed by the learned Subordinate Judge, Chidambaram does not require any interference and the order and decree granting divorce is confirmed.

13. Accordingly, this appeal is dismissed. However, there will be no order as to costs.

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Index:Yes/No

Speaking/Non-speaking order:Yes/No

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To

1. The Subordinate Judge,
Chidambaram.
2. The Section Officer
V.R.Section, High Court of Madras.



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A.A.NAKKIRAN, J.
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