



C.M.S.A. No.56/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.10.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

C.M.S.A. NO.56 OF 2021

AND

C.M.P. NO.22925 OF 2023

Dr. C.Bhaskar

.. Appellant

- Vs -

Dr. J.Gomathi

.. Respondent

Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act r/w 100 of the Code of Civil Procedure, against the fair and decreetal order dated 8.12.2020 passed in CMA No.4 of 2018 by the learned Prl. District Judge, Namakkal, reversing the fair and decreetal order dated 20.12.2017 passed by the learned Subordinate Judge, Thiruchengode, in H.M.O.P. No.121 of 2013.

For Appellant : Mr. M.Devaraj

For Respondent : Ms. Hema Sampath, SC, for



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Mr. J.Ramakrishnan

JUDGMENT

Vide order dated 28.08.2023, the appeal was dismissed for non-prosecution. C.M.P. No.22925 of 2023 has been filed to restore the appeal and being satisfied with the reasons shown therein, and learned senior counsel appearing for the respondent also not objecting to the restoration, the miscellaneous petition is allowed and the civil miscellaneous second appeal is restored back to file and taken up for final disposal.

2. For brevity, the appellant and respondent herein would be referred to in the same manner as arrayed before this Court for better clarity.

3. The brief facts of the case, as averred by the appellant seeking divorce, which are necessary for the disposal of this appeal are as under :-

The marriage between the appellant and the respondent was solemnised as per Hindu Rites and Customs on 22.8.1999 and out of the said wedlock, one female child was born on 22.5.2002. It is the case of the



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appellant that the respondent was bizarre in her act and had regularly threatened the appellant that she will commit suicide and the suicidal tendency of the respondent had pushed the appellant to many sleepless nights. It is the further case of the appellant that the respondent used to disturb the appellant while he was attending patients and speak for long hours and used to threaten the appellant and the entire family members that she will commit suicide.

4. It is the further case of the appellant that the respondent entered into the house of the appellant and removed their child from the custody of the appellant, which resulted in the appellant lodging a complaint with the Commissioner of Police, Salem. It is the further case of the appellant that the severe depression of the respondent coupled with her suicidal tendencies are not conducive for the upbringing of the child at the hands of the respondent and that the appellant is ready and willing to bring up the child till she attains majority. However, in view of the constant pestering of the respondent by subjecting the appellant to cruelty that she will commit suicide and not



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allowing to lead a normal and peaceful life, the petition for divorce was filed by the appellant in H.M.O.P. No.121/2013.

5. Countering the above averments, the respondent, it is the averment of the respondent that after her marriage, the petitioner and the respondent settled in Salem and they were having a peaceful life till such time the petitioner's brother got married. After the marriage of the petitioner's brother, the parents of the petitioner came and settled close by to the petitioner's house, whereinafter, the petitioner felt very depressed and from then on, he started torturing and ill-treating the respondent. Though the petitioner was a Psychiatrist, inspite of his depression, though the respondent asked him to consult another Psychiatrist, the petitioner did not yield to the said request. It is the further averment of the respondent that the petitioner wanted her to do Post-Graduate studies for which she joined Government service and started working in Nallur, Namakkal District. Whenever the respondent came down to Salem, the petitioner tortured her and her family members. The respondent got selected for M.S. (General Surgery) and as per the petitioner's wishes she underwent the said course. It is the further



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averment of the respondent that on one occasion in April, 2011, the petitioner called the respondent over phone and told her that he intended to remarry, which disturbed the respondent very much. It is the further averment of the respondent that during October, 2011, when the respondent visited Salem, the petitioner called her parents and asked them to take her away from his house and further falsely filed a complaint with the Commissioner of Police, Salem. Though the respondent and her family members took all steps for reuniting and having a happy matrimonial life, the petitioner had filed the petition for divorce to safeguard his life. It is the further averment of the respondent that in order to maintain the close relationship with his co-doctor, the petitioner had filed the present petition and that no cruelty was meted out by the respondent to the petitioner, but it is only otherwise and that the averment of the petitioner that the respondent threatened to commit suicide too often is nothing but an attempt to showcase the respondent in bad light for the purpose of getting a divorce.

6. It is the further averment of the respondent that pending the proceeding, the immoral relationship of the petitioner with his co-doctor



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resulted in the said co-doctor becoming pregnant and giving birth to a girl child and the hospital records reveal the name of the father of the child to be the petitioner and that the birth was registered in the Salem Municipal Corporation on 22.9.2014. It is further averred that only with a view to maintain the immoral relationship, the petitioner had filed the present petition and when the first marriage with the respondent is subsisting the act of the petitioner in raising such allegations against the respondent is only with a mala fide intention to safe guard the immoral relationship and subsequent marriage with the co-doctor.

7. Before the trial court, on the side of the petitioner, the petitioner examined himself as P.W.1 and Exs.P-1 to P-3 were marked and on the side of the respondent, R.W.s 1 to 3 were examined and Exs.R-1 to R-6 were marked. The trial court, after consideration of the evidence, both oral and documentary, passed a decree of divorce in favour of the petitioner, aggrieved by which the respondent filed appeal in C.M.A. No.4/2018 before the Principal District Judge, Namakkal.



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8. The appellate court, after framing the necessary points for consideration, taking note of the various oral and documentary evidences, held that the cruelty, alleged by the appellant has not been proved and that the respondent did not behave in the manner as alleged by the appellant and, accordingly, allowed the appeal by reversing the judgment and decree of divorce passed by the trial court. Assailing the said judgment, the present appeal has been filed by the appellant.

9. Learned counsel appearing for the appellant submitted that the appellant had even written to the father of the respondent about the act of the respondent in frequently threatening the appellant that she would commit suicide, which by itself is a cruel act meted out, which causes mental agony to the appellant. To substantiate the same, the appellant had marked Ex.P-3, the letter written to his father-in-law. However, imputing mala fide intent, with regard to the said letter, the appellate court had rejected the said evidence, which is erroneous.



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10. It is the further submission of the learned counsel that even the attempt of the respondent to suicide is known to the brother of the respondent, as on one occasion, the brother had saved the respondent from committing suicide. Further, it is the submission of the learned counsel that when the respondent was away at work, many times she had threatened the appellant that she is intending to commit suicide which prompted the appellant to speak to his friend to check on about the safety of the respondent. Therefore, the act of the respondent in continually threatening the appellant about committing suicide had caused mental cruelty to the appellant, which necessitated the filing of the petition for divorce. However, without considering all the aforesaid aspects, which have been analysed threadbare by the trial court, the appellate court had set aside the decree of divorce granted by the trial court, which is not made out on proper reasons and, therefore, the said decree deserves to be interfered with by restoring the divorce decree granted by the trial court.

11. Per contra, learned counsel appearing for the respondent submitted that the appellate court had analysed the materials in proper



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perspective while coming to the conclusion that the decree of divorce granted by the trial court is bad by holding that the respondent had not meted out cruelty to the petitioner. It is the further submission of the learned counsel that the letter, alleged to have been written by the appellant to his father-in-law had been disbelieved by the appellate court, which had gone on to reason as to how the letter was in the hands of the appellant, when it was written to the father-in-law. This clearly shows that the appellant had all along, for reasons best known to him, been planning for divorce, which necessitated in fabricating Ex.P-3.

12. It is the further submission of the learned counsel that the allegation of the appellant that R.W.2, the brother of the respondent had saved the respondent when she tried to commit suicide had been categorically denied by R.W.2. Further, R.W.3 had clearly spoken about the illegal relationship of the appellant with one Kavitha, a colleague, with whom the appellant had entered into a wedlock, when the marriage with the respondent was subsisting and that he they have also begotten a child from the said wedlock and, therefore, the attempt of the appellant to get divorce



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by putting the blame on the respondent, alleging cruelty is only for the purpose of safeguarding his bigamous marriage, which aspect has been clearly analysed by the appellate court, while interfering with the decree of divorce and, therefore, the said judgment does not require any interference at the hands of this Court.

13. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record and also the orders passed by the trial court and the appellate court.

14. The case of the appellant lingers on the alleged cruelty, meted out to the appellant by the respondent. To make out a case for cruelty, general allegations would not suffice, but specific and pointed allegations should be raised, which should be established through cogent and convincing oral and documentary evidence. Therefore, necessarily, it is for this Court to find out whether the allegation of cruelty has been established by the appellant so as



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to come to a conclusion that there has been an irretrievable breakdown of marriage necessitating the grant of divorce.

15. The ground of cruelty is premised upon the suicide attempts alleged to have been made by the respondent. Emphasis is greatly laid by the appellant on Ex.P-3, the letter written by the appellant to his father-in-law, projecting the attempts at suicide by the respondent and the times she was rescued from such attempts.

16. Ex.P-3, as aforesaid is the letter of the appellant to his father-in-law. However, the appellate court had disbelieved the said piece of document, for the reason that the letter, which is alleged to have been written by the appellant, ought to be in the hands of his father-in-law, but curiously, it has come back to the hands of the appellant. This Court is also greatly amused by the fact that a letter, which is supposed to have been written by the appellant to his father-in-law, could not be in his hands, but for said letter being a document, which is fabricated for the purpose of establishing cruelty, which would result in the copy of the said letter being



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retained by the appellant. However, this Court is not amplifying anything further to show the conduct of the appellant, but could very well come to the definitive conclusion that the said letter cannot form the basis for establishing cruelty meted out to the appellant by the respondent. Further, R.W.1, the father of the respondent had categorically denied such letter having been received by him and further the appellant has not given any reason to establish as to how the letter, which was written by him has returned back to him. Therefore, Ex.P-3, cannot be the basis to act upon the allegation made by the appellant. Further, the mere fact that an allegation of cruelty is made against the respondent by the appellant by producing a piece of documentary evidence, which is written by him, would not be suffice to establish cruelty.

17. In this regard, turning back to the evidence of R.W.2, on which the appellant places reliance to claim that the attempt at suicide by the respondent resulted in the rescue act by R.W.2, who is none other than the brother of the respondent. To a pointed question about the suicide attempt alleged to have been made by the respondent, the same was received with a



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categoric denial from R.W.2. Further, R.W.2 has clearly has clearly narrated the entire episode and had went on to state that no such act was done by the respondent. In fact, R.W.2 had given a clear response that there was no cruelty meted out to the appellant by the respondent threatening that she would commit suicide at any point of time.

18. Insofar as the submission of the appellant that very many times, the respondent had made threatening calls, while being outside, that she would commit suicide and during all such times, the appellant had to solicit the help of his friends to find out the safety of the respondent, which had caused grave mental disturbance to the appellant, however, it is to be pointed out that to substantiate the aforesaid contention either before this Court or before the courts below, witnesses have not been examined, who were contacted by the appellant and who were aware about the suicidal tendencies of the respondent. Therefore, the said contention cannot be accepted.



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19. Further, it is to be pointed out that even before the trial court, the respondent has raised an additional plea with regard to the immoral relationship between the appellant and his colleague, which has resulted in the appellant marrying the said colleague, viz., Kavitha, and due to the immoral relationship, a child born out of the said wedlock. To substantiate the aforesaid plea, R.W.3 has been examined by the respondent, who has clearly spoken about the marriage between the appellant and the said Kavitha. However, no contra evidence has been placed denying the relationship.

20. It is to be pointed out that all these acts have been perpetrated by the appellant pending the divorce petition. In fact, it is the specific case of the respondent that at one point of time, the appellant, during a telephonic conversation with the respondent, when the relationship was strained, had also informed the respondent that he is intending to enter into a new marriage. The materials available on record in the form of evidence of R.W.3, coupled with the documentary evidence clearly prove that the allegation made by the respondent against the appellant is borne out by materials.



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Therefore, even if at all any cruelty could be attributed, it could be attributed only to the appellant against the respondent and not vice versa. All the aforesaid aspects have been gone into, threadbare, by the lower appellate court, which had reversed the finding recorded by the trial court, which is based on cogent and convincing reasoning and not on mere surmises and, therefore, the well reasoned order of the lower appellate court does not warrant any interference at the hands of this Court.

21. For the reasons aforesaid, this appeal is dismissed confirming the fair and decreetal order dated 08.12.2020 passed by the learned Principal District Judge, Namakkal, in CMA No.4/2018 reversing the judgment and decree dated 20.12.2017 in HMOP No.121 of 2013 on the file of the Subordinate Judge, Tiruchengode. However, there shall be no order as to costs.

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To

1. The Principal District Judge
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