



C.M.S.A(MD)Nos.5 & 6 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.04.2023
DELIVERED ON : 01.06.2023

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.S.A(MD)Nos.5 & 6 of 2019

C.M.S.A(MD)No.5 of 2019:

M.Paulchamy

... Appellant/Appellant/
Respondent

Vs.

R.Rajakumari

... Respondent/Respondent/
Petitioner

PRAYER: Civil Miscellaneous Second Appeal is filed under Section 100 of Code of Civil Procedure r/w Section 28 of Hindu Marriage Act 1955, to set aside the judgment and decree passed by the learned Additional District Judge, Paramakudi in H.M.C.M.A.No.2 of 2017 dated 31.10.2018 by confirming the judgment and decree passed by the learned Subordinate Judge, Paramakudi in H.M.O.P.No.83 of 2012, dated 20.04.2017.

C.M.S.A(MD)No.6 of 2019:

M.Paulchamy

... Appellant/Appellant/
Petitioner

Vs.



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R.Rajakumari
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... Respondent/Respondent/
Respondent

PRAYER: Civil Miscellaneous Second Appeal is filed under Section 100 of Code of Civil Procedure r/w Section 28 of Hindu Marriage Act 1955, to set aside the judgment and decree passed by the learned Additional District Judge, Paramakudi in H.M.C.M.A.No.4 of 2017 dated 31.10.2018 by confirming the judgment and decree passed by the learned Subordinate Judge, Paramakudi in H.M.O.P.No.67 of 2012, dated 20.04.2017.

For Appellant : Mr.G.Thalaimutharasu
(In both cases)

For Respondent : Mr.M.P.Senthil
(In both cases)

COMMON JUDGEMENT

The appellant herein had filed H.M.O.P.No.67 of 2012 on the file of Sub Court, Paramakudi seeking divorce on the ground of mental cruelty and desertion. The wife had filed H.M.O.P.No.83 of 2012 on the file of Sub Court, Paramakudi for restitution of conjugal rights. Both the petitions were heard together. The divorce petition filed by the husband was dismissed and the restitution of conjugal rights petition filed by the wife was decreed by the trial Court. Challenging the same, the husband had filed H.M.C.M.A.Nos.2 and 4 of 2017 on the file of Additional



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District Court, Paramakudi. Both the appeals were dismissed confirming the judgment and decree of the trial Court. Challenging the same, the husband has filed C.M.S.A(MD)Nos.5 and 6 of 2019.

2. The contentions of the appellant / husband in the divorce petition could be summarized as follows:

(i) The husband and wife both are school teachers and they got married on 24.05.2010 as per Hindu customs and traditions at Shri Subramaniaswamy Temple, Abiramam near Paramakudi, Ramnad District.

(ii) The wife was unnecessarily picking up quarrel with the husband and she was compelling the husband to convert to Christianity.

(iii) The wife was continuously making false allegations as against the husband that he was having illicit relationship with a teacher who was working in the same school.

(iv) The wife was not interested in having a child and she had undergone abortion without the knowledge or consent of the husband.

(v) The wife was not interested in having conjugal relationship and she threatened to commit suicide if she was compelled to have conjugal relationship.



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3. The contentions of the wife could be summarized as follows:

(i) The divorce petition has been filed by the husband only to lead an illicit relationship with another teacher.

(ii) The husband used to stay for many days in the house of another teacher and refused to lead a matrimonial life with the wife.

(iii) The husband used to carry another teacher by name, Julia Rebekka Gnanasundari as a pillion rider in his bike often and he used to compare the wife with the said lady. A Panchayat was conducted by the village elders and thereafter, the husband and wife started living together between June 2012 to September 2012. Thereafter, the husband picked up a quarrel and drove away the wife. Therefore, the allegations of the husband that the wife has inflicted mental cruelty and she had deserted her husband are not factually correct.

(iv) The wife has further contended that the husband has driven away the wife and he is refusing to live with the wife without any reasonable cause. Therefore, she prayed for a decree for restitution for conjugal rights.



4. The findings of the trial Court:

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(i) The husband has not established that the wife was not willing to have conjugal relationship.

(ii) The husband has not established the fact that he was compelled to follow Christianity.

(iii) The husband has not placed any medical record to establish that the wife had undergone abortion without the knowledge or consent of the husband.

(iv) The husband has not proved that the wife had attempted to commit suicide.

(v) The husband has admitted that he used to carry another teacher as a pillion rider in his bike. Only because of this fact, misunderstanding had erupted between the husband and wife. Therefore, the allegation of the husband that the wife used to pick up quarrel is not legally sustainable.

(vi) Since the husband was not having proper relationship with the wife, the wife had left the matrimonial home and therefore, the contentions of the husband that she has deserted him are not legally sustainable.



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(vii) Even after Exhibit R.2 legal notice, the couple have lived together and therefore, it cannot be construed that there was desertion on the part of the wife.

(viii) Though the wife had lodged a complaint of dowry harassment as against the husband, the said complaint has been closed. The wife has not initiated any further proceedings. Therefore, the said complaint can never be construed to be causing mental cruelty to the husband. The letter addressed by the wife to the educational authorities and the paper publication made in Dinamalar were all intended only for having a reunion with the husband and therefore, those complaints and publications can never be considered to be causing mental cruelty to the husband.

(ix) Based upon the above said findings, the trial Court dismissed the divorce petition and allowed the petition filed by the wife for restitution of conjugal rights.

5. The findings of the first appellate Court:

(i) When the wife had doubted about the relationship of the husband with his co-teacher, the husband ought to have understood the sentiments of the wife and he should have stopped his relationship with the said teacher. Just because the wife had used the word illicit



relationship, the same cannot be construed to be a mental cruelty.

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(ii) The police complaint lodged by the wife, paper publication, and complaint lodged to the educational authorities were all done by the wife only under a wrong guidance and therefore, the same cannot be construed to be a mental cruelty. Based on the above said findings, the first appellate Court dismissed the appeal filed by the husband confirming the judgment and decree of the trial Court.

6. The second appeals have been filed raising the following substantial question of law:

“(a) Whether the Courts below are correct in holding that the appellant herein treated the respondent with cruelty having regard to the evidence?”

(b) Whether the first appellate Court is right in confirming the judgment and decree for restitution of conjugal rights without going through the pleadings on the side of the appellant?

(c) Whether the Court below are right in holding that the appellant is not entitled to get decree of divorce on the ground of desertion and cruelty?

(d) Whether the Courts below are right in not considering the ground of irretrievable break down of the marriage at least in the context of long separation between the parties?”



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7. Admittedly the parties have got married as per the Hindu customs and traditions on 24.05.2010 and they lived together only for a few months. They are not blessed with any children in the said wedlock.

8. The husband has raised various allegations as against the wife seeking divorce on the ground of mental cruelty and desertion. The ground of alleged compulsion to convert to Christianity, the wife undergoing abortion, refusal to have conjugal relationship, have all been found to be not proved by both the Courts below. From the pleadings and the evidence on record, this Court could find that the main dispute between the parties is with regard to the fact that the husband was having some kind of relationship with another teacher.

9. According to the wife, the husband was having illicit relationship with the said teacher, by name Julia Rebekka Gnanasundari and at one point of time, he started living with the said lady. There was a quarrel between the couple only due to the said fact and the wife was driven away from the matrimonial home. The said allegation is reflected in the reply notice sent by the wife to the husband on 14.05.2012 under Exhibit R.1. However, it is the contention of the husband that false



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allegation was made against him in order to bring down his reputation in the society.

10. The mother of the wife had been examined as P.W.2. During her cross-examination, she has admitted that before marriage, her daughter, namely the respondent in the appeal was residing along with the said Julia Rebekka Gnanasundari at Abiramam. The mother of the wife is also well known to the said Julia Rebekka Gnanasundari . P.W.2 further admits that her son-in-law and the said Julia Rebekka Gnanasundari were working in the same school before marriage. She further admits that before marriage, the appellant used to help the said Julia Rebekka Gnanasundari by carrying her as a pillion rider in his bike. From the deposition of the mother of the wife, it is clear that the wife, husband and the said lady, namely Julia Rebekka Gnanasundari were all known to each other. In fact, the respondent (wife) was residing in a house along with the said Julia Rebekka Gnanasundari and both were attending the school as a teacher before marriage. The wife and her mother were also aware that the appellant (husband) used to carry the said Julia Rebekka Gnanasundari as a pillion rider even before marriage.



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11. In the counter to the divorce petition, the wife has categorically admitted that at least for 4 or 5 years prior to the marriage, she is well known to the husband. She has gone to the extent of stating that the husband had brain washed her family in order to get her married. During cross-examination, the wife has also admitted that the said Julia Rebekka Gnanasundari had got transferred and she left to Tuticorin in the year 2011 itself and she is no longer working at Abiramam. However, when a reply notice is issued by the wife in the year 2012, the allegation of illicit relationship has been made. The said allegation is also repeated in the counter affidavit filed in the divorce petition. The wife had knowledge about the fact that even prior to marriage, the husband used to carry the said Julia Rebekka Gnanasundari as a pillior rider in his bike to the school. However, after marriage, she had raised some suspicion with regard to the said relationship and has picked up quarrel with her husband. It is the specific case of the husband that there is no such relationship and the said teacher was treated by him as a sister. Except the fact that the said teacher was carried as a pillion rider by the husband, no other oral or documentary evidence has been placed on records by the wife to establish the fact that the husband was having illicit relationship with the said lady.



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12. After filing of the divorce petition by the husband, the wife has lodged a police complaint alleging dowry harassment, not only as against her husband, but also as against all his family members. The husband has filed Crl.M.P.No.2885 of 2012 before Principal Sessions Court, Ramanathapuram seeking anticipatory bail. In the said application, the Public Prosecutor has submitted that the said complaint is pending as petition enquiry. Considering the fact that H.M.O.P.No.67 of 2012 was pending, the learned Principal Sessions Judge has granted anticipatory bail on 31.10.2012. It is pertinent to point out that there is no allegation of dowry harassment in the reply notice sent by the wife on 14.05.2012 which is marked as Exhibit R.1. Therefore, it is clear that pending divorce petition, the wife has lodged a police complaint as against the husband alleging dowry harassment. The trial Court as well as the first appellate Court have brushed aside the said complaint on the ground that the wife has not pursued the said complaint and therefore, the same cannot be treated as mental cruelty. However, this Court is of the view that when there is no such allegation in the reply notice, dated 14.05.2012, the complaint lodged by the wife in October 2012 alleging dowry harassment as against the husband and his family members is clearly an attempt to disturb the employment of the husband. The mere fact that she did not pursue the complaint will show that it was only a



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counter blast to the divorce petition.

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13. Pending divorce petition, the wife had issued a paper publication in Dinamalar on 27.02.2013 through her counsel. In the said paper publication, it is alleged that her husband is proclaiming that the marriage has been dissolved and nobody should enter into a second marriage with her husband. In case, if anyone attempts to marry the appellant herein, proceedings would be initiated under the Indian Penal Code not only as against the bride, but also as against her family members. During her cross-examination, the wife had denied filing any police complaint. However, she has not disputed the issuance of such a paper publication.

14. Pending divorce petition, the wife had addressed a complaint to the Assistant Elementary Education Officer on 21.04.2015 which is marked as Exhibit R.8. In the said complaint, she had alleged that her husband is attempting to perform a second marriage with a lady who is closely related to one Karupiah. She had further requested the educational authorities to initiate departmental action as against her husband for attempting to enter into a second marriage while first marriage was subsisting. A copy of the said letter has been marked to the



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Head Master of the school in which the husband was working. Another copy was marked to the appellant herein. The said Karupiah had addressed a letter to the educational authorities on 01.05.2015 which is marked as Exhibit R.9. In the said letter, he has stated that the appellant had never approached his family for a marriage and hence, the complaint is completely false. The wife who was cross-examined as P.W.1 has also not disputed the addressing of such a letter to the educational authorities. The paper publication and the complaint were given by the wife only under the fear that the husband is going to perform a second marriage due to wrong guidance. Once the husband has initiated divorce proceedings and the wife had initiated proceedings for restitution for conjugal rights, the parties have to work out their remedy only before the competent Court, unless there is an attempt by the husband to commit physical violence on the wife. Admittedly the parties are living separately at least from September 2012. These complaints have been lodged in 2013 without any basis whatsoever.

15. Except the allegation that the husband used to move around in the bike with another lady (which he used to do even before marriage), no further oral or documentary evidence have been placed to establish illicit relationship of the husband. The complaints lodged before the



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police officials, educational authorities and news paper publication pending divorce proceedings, would clearly indicate that the wife has no intention to have a reunion with her husband. Writing a complaint to the employer requesting him to initiate departmental proceedings as against the husband would certainly amount to mental cruelty. Paper publications made requesting the general public not to enter into any marriage with the appellant pending divorce proceedings would clearly go to show that the wife has attempted to tarnish the image of the husband before the general public. No oral or documentary evidence have been placed before the Court that the husband has ever attempted to remarry during the pendency of the Court proceedings.

16. The Hon'ble Supreme Court in a judgment reported in **2017 (4) CTC 208 (Raj Talreja Vs. Kavita Talreja)** in Paragraph No.10 has held as follows:

“10. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her Husband, his Family Members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere



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filing of Complaints is not cruelty, if there are justifiable reasons to file the Complaints. Merely because no action is taken on the Complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the Wife as cruelty within the meaning of the Hindu Marriage Act, 1955 (for short 'the Act'). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse leveling false accusations against the other spouse would be an act of cruelty.....”

17. In view of the judgment of the Hon'ble Supreme Court, it is clear that lodging false criminal complaint or making defamatory paper publications or complaint to the employer for initiating departmental action, would certainly amount to mental cruelty. The trial Court as well as the first appellate Court have not properly appreciated these documents which are subsequent to the filing of the divorce proceedings. Therefore, it is clear that the wife has no intention whatsoever to reconcile with her husband and for a reunion.

18. In view of the above said deliberations, the appellant has established all the ingredients of cruelty and therefore, the judgment and decree of the Courts below in both the appeals are hereby set aside. All



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the substantial questions of law are answered in favour of the appellant.

H.M.O.P.No.67 of 2012 stands allowed dissolving the marriage between the appellant and the respondent which had taken place on 24.05.2010.

H.M.O.P.No.83 of 2012 seeking restitution of conjugal rights stands dismissed. C.M.S.A(MD)Nos. 5 and 6 stand allowed.

01.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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To

- 1.The Additional District Judge,
Paramakudi.
- 2.The Subordinate Judge,
Paramakudi.
- 3.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR ,J.

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Pre-delivery order made in
C.M.S.A(MD)Nos.5 & 6 of 2019

01.06.2023