



C.M.A.(MD)Nos.1439 & 1440 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 29.09.2023

PRONOUNCED ON: **21.12.2023**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**
AND
THE HONOURABLE **MR.JUSTICE R.VIJAYAKUMAR**

C.M.A.(MD)Nos.1439 and 1440 of 2016

R.Balamurugan

...Appellant in both C.M.As

/Vs./

Sripriya

...Respondent in both C.M.As

COMMON PRAYER:- Appeals - filed under Section 19 of the Family Court Act against the order and decreetal order dated 18.04.2016 in H.M.O.P.Nos.263 and 268 of 2014 on the file of the Family Court, Madurai.



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In both C.M.As

For Appellant : Mrs.AL.Gandhimathi

Senior Counsel

for Mr.C.Mahadevan

For Respondent : Mr.R.Rajaraman

COMMON JUDGMENT

(Judgment of the Court was delivered by **DR.ANITA SUMANTH, J.**)

The marriage between the appellant and the respondent had been solemnized on 08.05.2002 in Chidambaram as per Hindu rites and customs. It was registered on 10.05.2002 before the Registrar, Pallavaram. Out of the said wedlock, the couple had a male child R.B.Pravin Manesh, born on 02.10.2003 and a female child R.B.Sushmithaa, born on 04.01.2006. Both children were born in India.

2. The appellant alleges that a few days after marriage, there had been an anonymous phone call to their residence conveying that the respondent had had an illicit relationship with one Raja, prior to their



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marriage. Though an enquiry had been made with the respondent, an explanation had been given by her and her family, and though not entirely convinced, the matter had not been precipitated by the appellant.

3. On 07.07.2002, the appellant had obtained a job in Singapore and the couple moved there. It is the appellant's allegation that the respondent had clandestinely been taking money from him for various purposes including purchasing international calling cards for elongated conversations with her family in India. Her behavior was entirely unpredictable and she had damaged her Mangalsutra on two occasions merely to force the appellant to buy a new chain for her in Singapore.

4. According to the appellant, the respondent was indifferent to the household as well towards the appellant and his parents. She is alleged to have travelled to India and stayed with her parents without obtaining the appellant's consent. The appellant has specifically alleged that the respondent had made threats of committing suicide on multiple occasions, both by herself as well as with their son by jumping from the



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19th floor of the building where they resided.

5. As far as the second child was concerned, the respondent had insisted that the delivery should be at Singapore, but the appellant had resisted on account of the expense that it would entail. After about 3 months of the birth of the daughter, on 31.03.2006, one of the family friends of the respondent, one Balachandar @ Baskar came to his house along with a group of men, the respondent, her mother and her elder sister and tried to take the son away by force.

6. While the appellant was in Singapore, the respondent is alleged to have undergone family planning operation (Laparoscopy) under the advice of her parents in Chidambaram. On account of the serious continuing differences between them, the appellant continued his work in Singapore and the respondent remained in India.

7. In December, 2006, the appellant returned to Chennai and initiated talks for reconciliation with the family members. The talks were briefly successful and the couple re-united and went to Singapore together with the respondent's mother on 15.06.2007.



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8. The difficulties continued even thereafter and the general tenor of the appellants' submission, is that the respondent was ill advised by her parents who precipitated, rather than resolved the differences between them. In April, 2008, in the course of a quarrel, the respondent cut her hands using her bangles and then filed a police complaint in a nearby station.

9. As is the procedure in Singapore, the couple was referred to counselling at the Rotary Family Service Centre. Despite counselling, the difficulties in the relationship continued, as, according to the appellant, there was no change in the attitude of the respondent. Thereafter, the appellant had lost his job in City Bank and was not employed thereafter till January, 2010.

10. While the appellant avers that he had resigned his job, the respondent, in the domestic complaint filed in DVC No.87 of 2014, states that he had lost his job on account of the police enquiry. In all however, the admitted position is that the appellant had been without a job from mid 2009 till January 2010.



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11. Neither the respondent nor her family bothered to attend the Shastiapthapoorthi (60th birthday celebration) of his father, though all due courtesies had been extended to them. At that juncture, the appellant had received an offer to serve in Australia and had specifically asked the respondent to join him there with the children. However, the respondent refused.

12. The appellant was thus constrained to leave to Australia by himself, leaving adequate money with the respondent for her care as well as the care of the children. He was prevented from conversing with his children over the phone. He returned to Chennai in May, 2011 when he found that the respondent's parents had shifted to Madurai.

13. On 02.06.2011, said Balachandar @ Baskar and the respondent's parents and relatives had threatened the appellant making various allegations including that they would not allow him to fraternize with his children. The appellant was thus constrained to make a complaint at C-3, S.S.Colony Police Station, Madurai on the same day. It is only after this that the respondent quietened down. The complaint does



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not appear to have been pursued by the Appellant. In any event a copy thereof has not been marked.

14. Thereafter, the appellant had approached the Family Court, Madurai by filing HMOP No.268 of 2014 u/s 13(1)(1A) of the Hindu Marriage Act 1956 ('Act'), on 07.06.2011 seeking dissolution of the marriage solemnized on 08.05.2022 between himself and the respondent. The respondent, for her part, filed HMOP No.263 of 2014 u/s 9 of the Act on 23.04.2014 seeking a decree of restitution of conjugal rights directing the appellant to live with her.

15. In the counter filed by the respondent to the prayer for divorce, she denied all allegations made against her. On the contrary, she alleged ill treatment at the hands of the Appellant, reserving her right to take action for the cruelty meted out to her at the appropriate juncture. She maintained that, in the interests of the family, she had never wished to part ways with the Appellant and that it was him who had left for Australia leaving the family behind.

16. She would allege that the Appellant was miserly and was



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making false allegations as against her. She would deny the allegation that she had threatened or attempted suicide at any point in time. As regards the averments that the appellant was always a caring husband and father ready to undertake and attend to his responsibilities, she would deny the same, also asserting that he had barely met the minimum reasonable expectations in that regard and nothing more.

17. On the part of the appellant, he was examined as P.W.1 and his father was examined as P.W.2. Six documents were marked, being copies of marriage registration certificate, marriage photo, complaint receipt, family card, General Power of Attorney and a petition in Cr.M.P.No.1382 of 2012 under section 12 of the Protection of women from Domestic Violence Act 2005. The respondent was examined as R.W.1 and she has not chosen to mark any documents.

18. The learned Judge considered the arguments of the appellant for divorce on the ground of cruelty agreeing with the respondent that the appellant had not treated her appropriately and that the filing of the police complaint in Singapore was only on account of



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19. According to the respondent, the appellant had not made any efforts to re-unite with her, whereas, the conduct of the respondent revealed her intention to always live together. The learned Judge also finds that the appellant had failed to maintain the family. A common order thus came to be passed on 18.04.2016 rejecting the request for divorce and allowing the prayer of the respondent for restitution of conjugal rights.

20. In the interim, the respondent had filed an application seeking maintenance in M.C.No. 87 of 2014 which had been ordered granting maintenance of a sum of Rs.12,000/- per month. Not content with the same, she filed further appeals till the Hon'ble Supreme Court that, by judgement dated 15.10.2019, enhanced the amount to a sum of Rs.25,000/- as maintenance per month. The maintenance is, admittedly, being paid every month without fail.

21. As in 2023, when the matter is taken up, the couple has been separated for more than 12 years. We ascertained the interest of the



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respondent to re-unite with the appellant bearing in mind the elapse of time and the fact that, as individuals, it is likely that had grown apart in so many ways.

22. The respondent would however insist that she is still keen on re-uniting, particularly for the reason that the children are now approaching marital age and thus it would be appropriate for the parents to play their part in such events as a couple. She submits that her intention has always been to remain united despite the problems that the relationship has faced over the years.

23. The appellant however pursues the appeals vehemently pointing out that there has been irretrievable break down of the marriage and the relationship between the couple. Though the couple has been apart, since effectively, 2011, the appellant would point out that he has never failed in his commitment towards the children. Till date, a sum of Rs.40.00 lakhs has been paid towards their maintenance and educational expenses.

24. For the last five-six years, the appellant has renewed his



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ties with his children and now maintains a cordial relationship with them.

The children are majors and are in college. He in touch with them regularly and is steadfast in his intention to continue his filial duties. He also points out that it was the respondent who had initially prevented the children from fraternizing with him or even speaking to him till recently. Left to himself, he had always been loving and affectionate to the children.

25. The appellant would unequivocally confirm that he has absolutely no interest in renewing ties with the respondent. This, he says is not on a mere whim or ego, but for the acrimonious turns that the marital relationship has seen since 2002. He would elaborate on the conduct of the respondent, which was very unsavoury right from start. The respondent had not been honest or upfront with him, he says, right from the word go.

26. She had stated that she had studied in an English Medium school, but it was only when the school certificates of the respondent had been required for processing of Visa, that the appellant came to know



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that the respondent had studied in Tamil Medium school upto Higher Secondary only.

27. He draws attention to the findings of the learned Judge in the impugned order stating that the observations have been made in favour of the respondent sans any supporting evidences having been produced by the respondent in that regard.

28. At paragraph 11 of the impugned order, the learned Judge states that the evidence produced by the respondent reveals that the appellant had not treated the respondent properly, not providing food or other amenities or even medical expenses. She concludes that the evidence showed that the appellant ill-treated the respondent, was *'addicted to alcohol and harassed her with cruel mentality'*. It is on this basis that the learned Judge justifies the filing of the police complaint by the respondent in Singapore.

29. However, barring the oral testimony of the respondent, it is true that there is no evidence that has been produced by the respondent in this regard. While it would be improbable to expect a victim to produce



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tangible and substantive evidence in regard to the instances of cruelty or ill treatment, the respondent has approached the police authorities in Singapore for relief.

30. Had a copy of the complaint been available to indicate that the allegations of cruelty and mental harassment had been made contemporaneously, one could have assessed the veracity of the deposition. However, the respondent has not marked a copy of the complaint and thus we are unable to appreciate the basis upon which the learned Judge has come to the conclusion that the appellant had inflicted cruelty and mental harassment upon the respondent.

31. The authorities at Singapore have referred the couple to counselling. Had it been a case of cruelty, alcohol addiction or domestic violence, certainly the authorities would not have rested content with the reference to counselling, but would have taken the matter up more seriously. Even for this reason we are not convinced that the conclusion of the learned Judge was correct, justified or based on evidences.

32. While the above discussion serves to outline the conduct of



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the respondent, the last nail on the coffin for the appellant appears to be the complaint filed by the respondent in Domestic Violence Complaint No.87 of 2014 on the file of the Judicial Magistrate, Additional Mahila Court, Madurai. The allegations of the respondent in the domestic violence complaint are pressing and serious, and are summarized below:

(i)The appellant had started harassment immediately after the marriage had taken place, demanding dowry and even physically abusing her by slapping her to ensure that the dowry demands were met.

(ii)Despite the same, the respondent had travelled to Singapore in the spirit of cementing the relationship. There, the respondent found that the appellant was an alcoholic who did not respect any of her sentiments who merely used her as a sexual toy.

(iii)Though the appellant had promised to have her well placed in a job, on arriving in Singapore, he revealed his true colours refusing to let her work. He insisted that the place of a woman was in the house and she was only required to maintain the household and keep him happy in every way.



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(iv) Her relatives, including, one Saraswathi, who had visited them with family had been insulted when they had made suggestions that they could assist in procuring a good job for her in Singapore.

(v) The mental and physical harassment of the appellant extended to the extent of taking her to Genting Amusement Park in Malaysia, where he insisted that she had to participate in the dangerous rides in the park solely with the intention of aborting the pregnancy. He abused physically her as well as mentally, not attending even to basic needs including medical needs at the time of pregnancy and later.

(vi) It was left to her retired father to attend to the expenses, both of herself as well as the children, as and when they were born.

(vii) Despite the ill treatment, her parents had showered the appellant with various gifts including gold jewellery, in the interests of ensuring a happy relationship between the couple.

(viii) Things came to a head after the birth of the children. Her possessions including her educational documents were taken away from her.



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(ix)The appellant had opened a locker in the Indian Bank where her assets, such as, jewellery and the jewellery of the children were kept. The entire control was with the appellant.

(x)Her educational documents and passport were taken away by the appellant under threat of being destroyed, causing her great mental and physical pain.

(xi)The appellant never cared for her or her children and used to leave them alone at home for long periods of time. He used to return drunk and had also said that he was being unfaithful to her.

(xii)A police complaint was filed by her before the police authorities at Singapore and the consequent enquiry caused him to lose his job.

(xiii)On 02.06.2011, he had come to their residence along with one Srinivasan @ Kumar attempting to take away the children which she along with her family had resisted. He then approached the police authorities but later had withdrawn the complaint.

33. The above allegations in the domestic violence complaint



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are grave. The respondent has levelled a slew of allegations regarding alleged instances of domestic violence and infidelity, calling into question the character of the Appellant. Having filed such a complaint, she did not pursue the same and the complaint had ultimately come to be dismissed by order dated 15.06.2022 for non-prosecution.

34. The allegations of physical and mental abuse, infidelity and wantonly attempting to cause bodily harm by forcing the respondent to participate in the rides in the amusement park are wholly unsubstantiated. On an overall appreciation of the matter, we also do not find much merit in the allegation that the Appellant did meet the basic expenses towards the care of the respondent or the appellant.

35. In all, we are left with the impression that the above application did not present a true or fair picture of the relationship, as regards the allegations we have referred to and dealt with above. We arrive at this conclusion also for the reason that the petitioner did not pursue the matter. The order of dismissal records the fact that the respondent had not appeared in response to several notices giving us the



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category impression that the allegations had been levelled unfairly and were untrue, to the knowledge of the respondent.

36. The fact that the appellant's parents had been arrayed as respondents with several allegations made against them as well, had, justifiably, caused much heartburn to the appellant. For this reason specifically, as well as the other grounds raised, the appellant would urge that the appeals be allowed and the order of the Family Court be set aside.

37. We have heard learned counsel and studied the pleadings carefully. We have also had the benefit of conversing with all the family members, the Respondent and the children appearing in person and the Appellant appearing virtually, from Australia.

38. The significant factual aspects of the matter that would have a bearing in our decision, are more or less admitted and we chronicle them as follows:

(i) the filing of the police complaint in Singapore by the respondent in response to which the couple was referred to marital



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(ii) the domestic violence complaint alleging abuse and infidelity of the Appellant that was not pursued by the respondent

(iii) the lack of evidence to substantiate the allegations of the Respondent concerning alcohol addiction, abuse and cruelty by the Appellant

(iv) the fact that the couple has been apart for the last 12 years

39. We have already found, in the paragraphs supra, that the observations and conclusions in the impugned order are incorrect. The admitted points set out in the discussion above would, by themselves bring the actions of the respondent within the purview of 'cruelty'. Though these allegations form part and parcel of the petition before the Family Court, the learned Judge has not adverted to the same.

40. The allegations are serious and judicial precedent is to the effect that the same are to be construed as 'cruelty' under the provisions of the Act. The respondent relies upon the decisions in *R.Padmini V. T.Hemachandran* (2017 4 LW 812) and *Murali Krishna V.*



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41. The Hon'ble Supreme Court in the cases of *K.Srinivas Rao V. D.A.Deepa* ((2013) 5 SCC 226, *Durga Prasanna Tripathy V. Arundhati Tripathy* ((2005) 7 SCC 353) and *Samar Ghosh V. Jaya Ghosh* (1 (2007) DMC 597) has held that where there is a substantive elapse of time when the couple has been living separately, that would be a considerable point that would weigh in favour of continuing the status quo.

42. In such an event, they say, there is hardly any chance of a relationship coming back to life and any re-union that is created by the Court would only be cosmetic and artificial. In this view of the matter, and having regard to the entire conspectus of the case, we are convinced that the conclusions of the Family Court are liable to be reversed and these appeals allowed.



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43. There is yet another aspect of the matter that reinforces our conclusion as aforesaid. We believe that despite the events of the past, howsoever disturbing and hurtful they may be, the present views of the stakeholders are paramount and must be taken into account in arriving at a decision whether the union of the couple is warranted now. In the present case, apart from the couple itself, the two significant stakeholders are the children.

44. The conversation with the children in this case was most interesting and illuminating. To be fair to the couple, one thing must be highlighted, as far as the children are concerned and their up-bringing. In matters involving acrimonious couples, more often than not, the parents bind the children in the strife and attempt to gain mileage with the children to the detriment of the other parent, leaving the children feeling bemused and confused.

45. Not so in this case, at least for the last perhaps, five years. The children have been having equal access to both the parents and the inputs we received from them reveal to us that (i) the respondent has



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been reiterating to them her intention and desire to re-unite with the appellant and (ii) the appellant has, even to the children, explained categorically that that such re-union would not be in the best interests of the family unit. He has, however, conveyed to the children as well that his decision as regards their mother would have no consequence on his relationship with them and his responsibilities as their father.

46. We appreciate the candour with which they spoke to us. Their demeanor was forthright and they had, very sweetly conveyed to us that, if at all the Court was intending to re-unite the parents, they would do their very best to ensure a cordial relationship in the house. While this is appreciated, this Court believes that the primary responsibility for creating and maintaining a cordial atmosphere within the family lies upon the parents and such a responsibility must not be abdicated and/or transferred to the children.

47. The facts that have weighed with us in coming to our ultimate conclusion are as follows:

- (i) The couple has been apart for more than 12 years.



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- (ii) The children are majors and are receiving cordial attention from both their parents. Their needs, both academic and otherwise, are being addressed by the parents.
- (iii) We are of the considered view that the observations and findings in the impugned order adverse to the Appellant are factually incorrect as no material evidence has been produced in support of the same.
- (iv) The appellant has expressed the deep hurt in regard to the allegations made over time by the respondent, touching upon his character and his conduct. We see some merit in the position that he has taken.
- (v) As far as the respondent is concerned, there is nothing that would convince us of the veracity of the allegations that she has been making over the years, especially those in the Domestic Violence complaint which she herself has given up.



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- (vi) Seen in the light of our notings and conclusions as above, her insistence on restitution of conjugal rights, to our mind would serve no purpose, except perhaps her own.
- (vii) The children have been extremely diplomatic and have made it clear that they would do their best in the relationship whatever may be the decision of the Court.
- (viii) However, we note that they are comfortable in the position where they are today.
- (ix) The needs of the respondent are also being met. The maintenance awarded to the respondent is being received by her till date and we are assured by the appellant that the same would be continued by him for his life time. This is recorded.

48. We are thus of the considered and categorical view that the appeals should succeed. We wish to add a caveat. The ultimate decision in matters of the heart lies in the hands of the interested individuals only.



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Our decision hardly matters if, at the end of the day, the parties should choose voluntarily to resume their ties and legalise them yet again. Till then, in light of the reasons assigned, these appeals are allowed and the judgments and the decreetal orders of the Family Court, Madurai dated 18.04.2016 are set aside. No costs.

**[A.S.M.J.,] & [R.V.J.,]
21.12.2023**

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

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Madurai.



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