



C.M.A. (MD) No. 374 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 12.09.2023

PRONOUNCED ON : 25.09.2023

CORAM:

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

C.M.A(MD).No.374 of 2016

V.Ramalingam

...Appellant

Vs

R.Amudhavalli

...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19(1) of the Family Courts Act, to set aside the judgment and decree made in HMOP.No.11 of 2015 by the Family Court, Tiruchirappalli dated 27.01.2016.

For Appellant : Mr.D.Venkatesh

For Respondent : No appearance

J U D G M E N T

(Judgment of the Court was made by **R.VIJAYAKUMAR, J.**)

The husband is the appellant. He had filed HMOP.No.11 of 2015 before the Family Court, Trichy for the relief of divorce on the ground of mental



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cruelty. The said petition was dismissed on 27.01.2016. Challenging the same, the present appeal has been filed.

2.The appellant got married to respondent on 29.08.2010 as per Hindu Customs and out of the wedlock, a daughter was born to them on 23.11.2012. The couple are living separately from 21.10.2012 onwards due to marital discord. These facts are not in dispute.

3.The allegations of the husband in the divorce petition are as follows:

(i)Right from the date of marriage, the wife is suffering from high depression and behaving in a violent manner and abusing the petitioner and throwing the household articles.

(ii)The wife used to carry knife in her hand bag. When the husband failed to act as per her wishes, she started behaving in a violent manner creating fear in the minds of the husband.

(iii)The wife used to taunt her husband citing his lesser educational qualification and status of the family.

(iv)On 15.01.2011, when husband's elder brother's wife namely Anitha called him over phone to convey Pongal wishes, she grabbed the phone and abused the said Anitha that she is having illicit relationship with him.



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(v) During the last week of January 2011, when the wife was advised by her parents and relatives, she picked up quarrel and used unparliamentary words and reiterated the allegations against the said Anitha. On 08.05.2011, the wife poured kerosene on her body and attempted to commit suicide.

(vi) The couple got separated on 17.07.2011. However, due to intervention of the relatives, they got reunited by entering into a deed of compromise on 12.12.2011.

(vii) On 10.01.2013, the wife called the husband's colleague namely Roselin and abused her that she is having illicit relationship with her husband. On the same date, the wife had also called the said Anitha and abused her.

(viii) The wife persistently and repeatedly treated the husband with mental cruelty causing reasonable apprehension in his mind and it will be harmful and injurious to him to continue to live with the wife.

4. The wife had filed a detailed counter disputing all the allegations including the verbal abuse alleged to have been made by her. She had further stated that she is always willing to join with the petitioner and lead a normal marital life as a dutiful wife.

5. Findings of the trial Court:

(i) The husband has not established the fact that the wife had picked up



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quarrel and abused him to such an extent of causing mental cruelty.

(ii) Even though the wife is alleged to have abused the husband's brother's wife namely Anitha, during her cross examination, the said Anitha had stated that she has no objection for the couple to reunite.

(iii) Though the couple had got separated for nearly five months in the year 2011, it is only due to Aadi ritual. Exhibit P2- compromise deed does not refer to any of the allegations made by the husband relating to the abuse of Anitha.

(iv) After the marital discord, the couple had started living together. Thereafter, given birth to a girl child on 23.12.2012.

(v) The husband had attempted to rely upon a transcript of SMS messages which are said to be highly abusive about him. However, neither the mobile nor the transcription of SMS has been marked. Therefore, the same cannot be relied upon. Hence, the contention of the husband that he was referred as transgender in the sms messages has been created only for the divorce petition.

6. Based upon the above said findings, the Family Court arrived at a conclusion that the husband has not established the mental cruelty said to have been perpetrated by the wife and proceeded to dismiss the divorce petition.



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7.The learned counsel for the appellant/husband had contended that right from the early days of the marriage, the wife used to taunt the husband with abusive words citing his lesser educational qualification and his family background. The wife has been using very harsh and unparliamentary words as against his brother's wife alleging illicit relationship. She had also made a call to his colleague making a similar allegation. Therefore, the husband was not able to attend to his work.

8.The learned counsel had further contended that the couple is living separately for more than 10 years and there is no possibility of a reunion. The breakdown of the marital tie should also be taken into consideration. He had further contended that the wife had neither made any attempt for a reunion nor has filed any application for restitution of conjugal rights. Only to harass the husband, the wife is attempting to cling on to the marital tie. Hence, he had prayed for allowing the appeal and to grant a decree for divorce.

9.Per contra, the learned counsel for the respondent/wife had contended that the husband was not able to establish any one of the allegations made by him in the divorce application. PW2 who is the brother's wife of the husband has not supported his case. She had categorically stated that she has no objection for the reunion of the couple. The abusive words alleged to have been



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uttered by the wife have not been proved by the husband. Only with an intention to enter into a second marriage, the present divorce petition has been filed with fake allegations. In fact, after the alleged events, the couple have lived together and they have begotten a girl child. Therefore, none of the ingredients of mental cruelty have been established by the husband. The husband cannot be permitted to rely upon transcript of alleged SMSs said to have been sent by the wife especially when they have not been marked before the Family Court. Hence, he prayed for sustaining the order passed by the Family Court.

10. We have given anxious consideration to the submissions made on either side.

11. Primarily the allegation of the husband as against the wife is that she used to abuse him, his brother's wife and a lady colleague namely Roseline by using unparliamentary words. The appellant's brother's wife namely Anitha was examined as PW2. Though she had deposed that the wife had used harsh word, the nature of allegation is not spelled out during the cross examination. Further PW2 had categorically stated that she has no objection for the reunion of the couple. She had also admitted during her cross examination that after the alleged events on 15.01.2011, the couple had lived happily as a family and a child was also born to them. The husband has not chosen to examine his lady



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colleague with regard to the allegation made in Paragraph No.14 of the divorce petition. Therefore, we are of the considered opinion that the husband has not established the fact that the wife had abused in such a manner that it had caused mental cruelty to the husband to such an extent that it would be harmful for him to continue to live with the wife.

12.The couple had got separated on 17.07.2011 and got reunited on 15.12.2011 based upon an agreement dated 12.12.2011. The said agreement had been marked as Exhibit P2. A perusal of the said document reveals that the couple got separated due to Aadi ritual and other discord between them. In view of intervention of the elders and family members, they have decided to live together from 15.12.2011. Therefore, it is clear that whatever that had happened before 15.12.2011 has been condoned by the husband and the couple had started living together. One year thereafter namely 23.12.2012, a girl child was born to them. All the allegations in the divorce petition are prior to 15.12.2011.

13.The only allegation that is said to have happened on 10.01.2013 relates to using of abusive language by the wife as against the lady colleague of the husband. No one has been examined on the side of the husband to establish the same. Though the husband had pleaded that on the same day, the wife had also abused his brother's wife, PW2, has not supported the said pleadings.



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Therefore, it is clear that the appellant had miserably failed to establish the ingredients of mental cruelty through legally acceptable evidence.

14. The learned counsel appearing for the appellant in his typed set has enclosed the alleged transcript of SMS said to have been sent by the wife on various days using abusive language. However, there are no pleadings to the said effect in the divorce petition. This transcript was not marked before the Family Court. Without pleading and marking of the document, an attempt was made by the husband to cross examine the wife relating to the said messages. The wife had categorically denied sending of any abusive SMS to the husband. Therefore, the Family Court was right in rejecting the said allegation.

15. In view of the above said deliberations, the Family Court has rightly dismissed the divorce petition. We do not find any illegality or infirmity in the order of the family Court warranting interference. This Civil Miscellaneous Appeal lacks merits and the same is dismissed. No costs.

[A.S.M.J.] & [R.V.J.]

25 .09.2023

NCC : yes/no
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1. The Family Court, Tiruchirappalli
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.ANITA SUMANTH, J.
AND
R.VIJAYAKUMAR, J.

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Pre-delivery Judgment made in
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