



C.M.A.(MD).No.981 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.11.2023

Pronounced on : 22.12.2023

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI**

CMA(MD) No.981 of 2021

A.X.Naveenkumar

...appellant/
Petitioner

Vs.

J.Infant Vinitha

... Respondent/
Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act against the fair and decreetal order dated 15.09.2021 in D.O.P.No.259 of 2020 on the file of the Family Court, Tirunelveli.

For Appellant : Mr.S.Abimanyu

For Respondents : Mr.S.Srinivasa Raghavan

JUDGMENT

RMT.TEEKAA RAMAN, J.

This Civil Miscellaneous Appeal is directed against the fair and decreetal order dated 15.09.2021 made in D.O.P.No. 259 of 2020 by the Family Court, Tirunelveli.



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2.The appellant is the husband and the respondent is the wife.

For the sake of convenience, the parties are referred to as 'husband' and 'wife'.

3.Initially, the husband filed a petition for divorce before the Family Court, Cuddalore and the same was taken on file in DOP No. 178/2020 on 04.09.2020. While so, as per the order of this Court in Tr.CMP(MD) No.243/2020, the case was transferred to Tirunelveli and the Family Court, Cuddalore has transmitted the case records to the Family Court, Tirunelveli and subsequently, before the family Court, Tirunelveli, the case was renumbered as DOP No.259/2020 and tried.

4. The husband filed the above divorce petition for dissolution of marriage under Sections 10(IX) (X) and Section 43 of Divorce Act. The marriage between the parties took place on 08.09.2017 at Palayamkottai. Both the parties are engineered with MBA degree. It is alleged that the wife left the matrimonial home with her father. After exchange of pre-litigation notice and legal notice, the above case has been instituted initially before Cuddalore and subsequently it was tried



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before the family Court, Tirunelveli, as per the orders of this Court as stated supra.

5. During trial, the husband examined himself as P.W.1 and examined P.W.2-Pastor of the Church, P.W.-3- neighbour and P.W.4-Head Constable of Police and marked Ex.P1 to Ex.P21. On the side of the wife, she examined herself as R.W.1 and their family Priest was examined as R.W.2 and exhibited Ex.R1 to Ex.R19. On considering both the oral and documentary evidence, the family Court has come to the conclusion that the alleged cruelty was not proved in the manner known to law and the alleged incidents stated by the husband cannot be termed as cruelty, and accordingly, while rejecting the case of the husband, dismissed the petition and hence, the appeal.

6. Heard the learned counsel for the appellant/husband and the learned counsel for the respondent/wife.

7. Mr.S.Abimanyu, learned counsel appearing for the petitioner/husband would contend that D.O.P.No.259 of 2020 was filed



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before the learned Family Court, Tirunelveli by the husband for divorce on the ground of cruelty. He would contend that on 08.09.2017, the marriage was solemnized; from 12.06.2018, the parties are living separately and on 23.08.2020, the above petition was filed.

8. The sum and substance of the allegations levelled by the husband against the wife for cruelty is that she was not properly invited and received for the Maiden Christmas at Tirunelveli and she refused to attend his friend's marriage at Hyderabad. When they went to Kodaikanal, she refused to come out for shopping. Baby shower function was proposed to be held at Cuddalore, however she has not cooperated. The pregnancy of the baby child was not informed to him. The birth of the female child was not intimated to him, however, it was intimated only to the father-in-law (husband's father). She has not co-operated for the celebration of the birthday of the child at Cuddalore. The respondent/wife has conducted baptism at Tirunelveli Church without inviting the husband and though, the respondent wife was invited to join the matrimonial home, she didn't turn up. Hence, the husband initially filed IDOP No.107 of 2019 for restitution of conjugal rights before the family



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Court, Cuddalore and subsequently it was withdrawn and filed another application for dissolution of marriage on the ground of cruelty.

9. Heard the learned counsel for the respondent/wife. He would contend that the trial Court has considered all the contentions raised by both the parties and no interference is warranted to the well considered findings of the trial Court and prays for dismissal of the appeal.

10. After hearing the rival submissions and also perused the documents filed before the Court below, we find that the husband sought divorce on that the following acts of the wife, which, according to him, amounts to mental cruelty:

- The husband was not properly invited by the parents of the wife for the first Christmas (maiden Christmas);
- Though the husband intimated his arrival to the wife and her parents, they locked the door and he was forced to open the door by himself to enter the empty house;
- When both of them went to Kodaikanal, the wife refused to come out with the husband for shopping;



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- When both of them went to Hyderabad, she refused to attend the marriage party of his friend and thereby he was humiliated and defamed;
- The pregnancy was not informed to the husband thereby it has caused mental trauma to him;
- The birth of the female child was not intimated to him, however, it was informed only to the father of the husband;
- When the husband requested to celebrate the birthday of the child at his parents' house at Cuddalore, the wife refused it, which act amounts to humiliation, according to him;
- With regard to the plea of desertion, it is alleged that both of them lived together only for nine months and they are living separately from 12.06.2018 and the compromise steps taken through P.Ws.2 and 3 also ended in vain;
- The wife refused to attend the baby shower function proposed to be held at Cuddalore;
- The major allegation is that the wife is in the habit of blaming the husband's paternal uncle and aunt and not to live with them and seek for separate house, whereas, the parents of the husband is



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living in the house of his brother (paternal uncle of the husband);

11. After perusing the answers elicited in the cross-examination of P.W.1/husband and the cross-examination of R.W.1/wife, we find that the wife has admitted that on 18.12.2017, the parents of the wife came to the house and took her for attending MBA examination and also invited the appellant to come for Christmas and further the wife has categorically stated that due to special Christmas prayer that commences between 11 p.m. and midnight 1 o'clock, she along with her parents went to Church by keeping the key of the house nearby place and the same is blown out of the proposition.

12. With regard to non intimation of the pregnancy is concerned, non intimation of the birth of the child stand negated by virtue of electronic evidence, namely, Ex.R11 and Ex.R13 copy of messages sent by the wife to the husband and Ex.R18 – CD and thus, the trial Court has rightly come to the conclusion that Ex.R8-whatsapp messages between the husband and wife and Exs.R11, R13 and R18 clearly demonstrated that when she went to Tirunelveli private hospital only, she came to know



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about her pregnancy. The factum of pregnancy was duly informed to the husband as could be seen from Exs.R11 and R13 and that only due to her pregnancy and birth of the child, she remained in her parental house and hence the allegation levelled by the husband against her regarding non intimation of pregnancy and delivery of the child falls to ground and it appears to be a false plea raised for the purpose of this case.

13. After perusing the photographs filed by both parties in Exs.P17 to P.21 also Ex.R1 to Ex.R7, Ex.R9 and Ex.R10, it is seen that both husband and wife have lived happily together, enjoyed their life and therefore, the plea raised by the husband that right from the day one of the marriage, the wife is not happy with him stands for no reason.

14. The next plea raised by the husband for dissolution of marriage is that the wife has given a false complaint alleging dowry harassment. To substantiate the same, the wife has filed Ex.P17, nine numbers of jewels worn by her during marriage and engagement and Ex.P20-necklace presented by the husband's mother to the wife.



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15.(a) In this regard, Ex.P15 petition given by the wife to the Commissioner of Police, Tirunelveli and final report filed thereon Ex.P16 was pressed into service along with Ex.P10 copy of the notice sent by the police and Ex.P11 - copy of the order in CrI.O.P.(MD) No.13176/2020.

(b) A perusal of the same would go to show that an element of dowry demand, the complaint has been received by the concerned All Women Police Station and notice was sent to the husband and that no case was registered and hence, the said CrI.O.P.(MD) No.13176/2020 seeking anticipatory bail was closed by this Court, as neither a case is registered nor a petition is pending before the respondent police. Hence, we find that the husband and his parents are over-anxious and over-reacting to the complaint of the police, when no case has been registered and the same was closed with an advice to approach the civil Court.

(c) Therefore, it is evident that such a complaint will not amount to cruelty as alleged by the husband.

(d) We are fortified by the decision of this Court in D.Suganthi v. B.Janakiram dated 24.07.2002, wherein, it has been held thus:



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“out of panic if the appellant and the members of his family sought anticipatory bail, the respondent cannot be blamed for that. Thus, we are of the opinion that the representation made by the parents of the respondent to the Cell for reconciliation of the estranged spouses, does not amount to “mental cruelty” caused to the appellant.”

16. Relying upon the very same decision, the family Court has rightly come to the conclusion that a mere complaint lodged by the wife will not be termed as cruelty. Accordingly, we are of the view that when no case has been registered and anticipatory bail petition was closed, the mere fact that the wife had lodged a complaint cannot be termed as cruelty.

17. In the preceding paragraphs, this Court found that Ex.R8, Ex.R11, Ex.R13 and Ex.18 intimation regarding the pregnancy and delivery of the girl child by name, “Alan Navya” was duly informed to the husband and their family and even for naming ceremony, necessary invitation has been extended to the husband side. Furthermore, the function said to have been arranged by the paternal uncle of the husband



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and hence, the wife has expressed reservation with regard to their conduct of the paternal uncle of the husband and wanted to celebrate in her parental home. Such an act of the wife cannot be termed as cruelty.

18. The husband has admitted that after the naming ceremony, he has not even cared to visit the child. He has also admitted in his cross-examination that he has never visited or spent any time with the child till the date of cross-examination. The said fact also assumes significance. The attitude of the husband shown to his own daughter has to be taken note of.

19.(a). It remains to be stated that even in the reply notice Ex.P4 and rejoinder notice Ex.P6, it is categorically stated that she is interested and inclined to live with the husband and in-laws as a joint family. The only clog appears to be the younger brother of the father of the husband and his aunt, which should have been sorted out by a mediator or the family friends. P.Ws.2 and 3, who are the Priest and neighbour also made their attempts. Even in their cross-examination, they have categorically admitted that they have not conducted any mediation for re-union of the



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party. However, they stated that the husband is willing for re-union.

(b) Thus, this Court finds that the explanation offered by the wife as far as the in-laws and husband are concerned, there is no problem for her to live together as a joint family and that she has not demanded for any separate family. However, the problem for the wife is that the family of the husband's paternal uncle, they are creating some problems, since their daughter is not living happily with her husband.

(c) Hence, the wife has expressed her difficulty in living with them under one roof. It is also admitted by the husband that for some time, the wife lived with him in a separate house ie., from 10.10.2021 to 20.02.2022. However, the husband repeatedly insulting the wife and the husband and wife lived together in the ground floor of the husband, which is only at the intervention of the paternal uncle. However, the things went wrong.

(d) It is seen that the husband is not inclined to mend his ways and not even cared to give basic comfort and matrimonial comfort to the wife



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in the matrimonial home. He is beating the bush by alleging that the wife has suppressed about her artificial teeth and also alleged that when they went to Munnar and Kodaikanal for Honeymoon, the wife has refused to come out of the room, for which he alleged that he was humiliated. It was thick of December winter, with the basic knowledge and as a human being, one should know that in the cold weather, a newly married girl will have her own reservation to come out in the cold weather. The husband appears to be blowing his trumpet out of proposition.

20. As far as the other ground that while they went to Hyderabad, she refused to attend his friend's wedding is concerned, we are unable to accept the same for the simple reason that the said act will not amount to or be termed to be cruelty. However, the husband has not even spoken to anything about the discomfort faced by him after her travel or other reasons. In the absence of anything, he is taking trivial issues to make a mountain out of a mole hole.

21. It is to be noted that the grounds of dissolution of marriage on the ground of cruelty as defined under Section 10(1) of the Divorce Act



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was amended in the year 2001. After the amendment, it is incumbent upon a person, who is alleging cruelty as a ground of divorce, to plea and prove, that cruelty is of such a nature that, “it creates a reasonable apprehension in the mind of the opposite party”.

22. Here in the present case, there is no material whatsoever available on record to satisfy the ground of cruelty as stated supra. Though this point was omitted to be considered by the family Court, we have taken note of the said fact in the absence of any pleadings or any evidence to the effect that the husband was subjected to reasonable apprehension in the minds of the opposite party about the cruelty is not entitled for the relief of dissolution of marriage on the ground of cruelty.

23. In a recent decision in ***Smt.Roopa Soni v. Kamalnarayan Soni*** [2023INSC814], the Hon'ble Supreme Court has held as under:

“ 10.On the question of burden in a petition for divorce, burden of proof lies on the petitioner. However, the degree of probability is not one beyond reasonable doubt, but of preponderance.”



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24. From the allegation alleged, we are satisfied that the husband is in the habit of pick up petty things and projecting it as a blame on the wife and term it as cruelty and hence, we find that none of the allegation levelled by the husband against the wife amounts to mental cruelty.

25. Taking into the nature and contents of Ex.P10 and the order passed by this Court under Ex.P11 and final report, Ex.P16 and on re-appreciation of the oral and documentary evidence in connection thereto, we find that the finding rendered by the family Court is just and proper, which does not suffer from any illegality or irregularity.

26. For the foregoing reasons, the fair and decreetal order dated 15.09.2021 in D.O.P.No.259 of 2020 by the Family Court, Tirunelveli, stands confirmed. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

(T.K.R.,J.) (P.B.B.,J.)
22.12.2023

NCC : Yes/No
Index : Yes/No
RR



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- 1.The Family Court, Tirunelveli
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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RMT.TEEKAA RAMAN,J.
AND
P.B.BALAJI, J.

RR

Pre Delivery judgment made in
CMA(MD) No.981 of 2021

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