



CMA(MD).No.150 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.06.2023

PRONOUNCED ON : 17.07.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.150 of 2017

Jebi Victoria

... Appellant

vs.

S.Vijayakar

...Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 55 of Indian Divorce Act, to set aside the order and decreetal order dated 14.07.2016 in IDOP.No.26 of 2013 on the file of the I Additional District Judge, Madurai and allow the appeal as prayed for.

For Appellant : M/s.AL.Gandhimathi
Senior Counsel
For Mr.C.Mahadevan

For Respondent : Mr.Isaac Mohanlal
Senior Counsel
For Mr.T.Cibi Chakaraborthy



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JUDGMENT

The above appeal has been filed challenging the order of divorce granted by the I Additional District Court, Madurai in I.D.O.P.No.26 of 2013.

2.The respondent/husband had filed I.D.O.P.No.26 of 2013 before the I Additional District Judge, Madurai for divorce on the ground of mental cruelty and desertion. The parties are Christians and their marriage was solemnized at C.S.I. Cathedral at Palayamkottai, Tirunelveli on 22.02.1990. The couple is blessed with a female child on 05.07.1991 and a male child on 17.02.1998. These facts are not in dispute.

3.The summary of the allegations made on the side of the petitioner/husband are as follows:

(i).During May 2000, when he visited West Germany to explore the possibility of a new business, he had suffered mental depression and he was admitted in a Government Hospital in Germany. Later, with the help of his friends, he got discharged and returned to India. He was



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received by his father and his elder brother in the airport. However, the wife had not come to airport to receive him. He is taking regular treatment with Doctor Gandhirajan, a Psychiatrist at Madurai. Due to regular treatment, he has not suffered from any depression thereafter.

(ii). Though the Doctor had advised the wife to take care of him affectionately and to administer tablets regularly, she had slowly drifted away from the husband and prevented the children from moving close with him. The petitioner had started a new business in Madurai and Trichy in the year 2004-2005. The respondent's attitude towards the petitioner changed completely in the year 2006 and therefore, she stopped serving food to him and she used to return home only after 9.00 p.m. The wife had started to avoid the company of the husband from the year 2006 onwards. The respondent/wife totally neglected the petitioner and did not provide food and started to live separately in the matrimonial house itself by deserting the petitioner from 2006 onwards. Therefore, the petitioner was provided with food by the parents when he visited them either of lunch or dinner. Therefore, the petitioner suffered a lot due to the cruelty of the wife by not allowing the husband to enjoy the



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conjugal relationship or sharing love and affection with his children.

(iii).It was further contended that since the respondent/wife did not take care about the petitioner/husband and prevented him from having close relationship with the children and due to non medication, resulted in mental disturbance to the petitioner during May 2013. Due to the said disturbance, he was involved in an incident which culminated in registration of F.I.R in Crime No.384 of 2013.

(iv).Further the petitioner was referred to a hospital for treatment where it was certified that he suffered from bipolar mood disorder and he was improving with medication. Thereafter, he was released on bail. It is further contended that the Judicial Magistrate No.XIV, Egmore, Chennai had directed his brother Sudhakar Jeyaraj to protect, maintain and to treat the petitioner regularly and directed him to execute an undertaking to that effect. After getting bail order, the brother of the petitioner requested the respondent to stay at Chennai to receive the petitioner after release but she declined to do so.

(v).According to the petitioner, he was admitted in a private hospital by name 'COSH', a multi speciality hospital for two weeks and



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he was looked after by his parents and hospital staff. But the respondent never called or even visited the petitioner. The respondent presented a complaint to the Superintendent of Police, Madurai to prevent him from entering into the matrimonial home.

(vi).The respondent made an advertisement in daily Thinathanthi on 27.08.2013 through her advocate, alleging that the petitioner is an insane person and he is attempting to alienate his properties along with his father.

(vii).The respondent had filed a petition before the XIV Metropolitan Magistrate, Egmore, Chennai on 25.10.2013 to withdraw the surety given by her to the petitioner under Section 444 of Cr.P.C. Without assigning any reason, she wanted to withdraw herself from the surety in the above case.

(viii).The petitioner/husband had further contended that the respondent had moved Judicial Magistrate No.IV, Madurai alleging that the petitioner is a lunatic and seeking an economic relief and the relief that he should not visit the children. These proceedings were initiated under Protection of Women from Domestic Violence Act. It is further



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alleged that the respondent had sent a representation to the Commissioner of Police, Chennai requesting that the case filed by the Kilpauk Police should not be referred as mistake of fact but insisted that charge sheet should be filed against the petitioner.

(ix).The petitioner had further alleged that the respondent had thrown away the thali. To worsen the situation, the respondent had filed MHOP.No.6 of 2013 to declare that the petitioner as an insane person and to appoint, her as guardian by suppressing the real facts.

(x). All facts put together would clearly establish the mental cruelty perpetrated by the wife and also desertion.

4.Summary of the objections filed by the respondent/ wife are as follows:

(i).Right from the date of marriage, the husband used to pick up quarrel with the respondent for unknown reasons.

(ii).All the business adventures have ended in failure. The loss in business was mainly due to the mental illness of her husband and the attendant erratic, arrogant and discourteous behaviour with friends, relatives and customers.



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(iii).The husband being misguided by his father who has taken back 10 cents of land which he had gifted to his son. In fact her mother-in-law had disclosed that even before the marriage, the petitioner was suffering from mental illness.

(iv).The husband had sold away valuable properties for a paltry sum due to his mental illness.

(v).For the past 6 years, he was residing with his parents leaving the respondent and her children in Madurai under the pretext of doing business.

(vi).Due to his illness, he was involved in an incident on 22.05.2013 and he was arrested in Crime No.384 of 2013 and only based upon the undertaking given by the respondent and the brother of the petitioner, he was released on bail. However, her father-in-law and the husband's brother did not make any arrangement to give treatment to the husband and therefore, in view of the breach of such condition, she was constrained to withdraw the surety.

(vii).At the instigation of the husband's brother Sudhakar, 3 masked person trespassed into the residence of the respondent and she



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and her children were attacked and a case under Section 307 I.P.C was registered

(viii).The wife had further contended that the husband had written 12 page suicide note. She apprehends that if her husband and his property are left in the custody of her father-in-law, he would reduce her husband as a living vegetable by not giving any treatment to him and the house property would be sold for a throw away price.

(ix).Only under the above said circumstances, she was forced to approach the police authorities to protect her and her children. She has never deserted her husband and she has never caused any cruelty to him. In fact, she saved her husband many times from critical situations whenever he indulged in illegal activities. Hence, she prayed for dismissal of the divorce petition.

5.The respondent was examined as PW1 and his brother was examined as PW2. The wife had examined herself as RW1. Exhibits P1 to P19 were marked on the side of the husband. Exhibits R1 to R22 were marked on the side of the wife.

6.The learned Judge after considering the oral and documentary



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evidence had arrived at a finding that the husband had failed to prove the ground of desertion and the said ground was answered as against the husband. However, with regard to the ground of mental cruelty, the learned trial Judge relied upon Exhibits P10, P11, P13, P14 and P15 and the evidence of RW1 to arrive at a finding that the wife had caused mental cruelty to the husband and proceeded to grant a decree for divorce on the ground of mental cruelty. This order is under challenge in the present appeal.

Submissions of the learned Senior Counsel appearing for the appellant:

7.The learned Senior Counsel appearing for the appellant had contended that husband has been suffered from some kind of mental illness even before the date of marriage and it was suppressed at the time of marriage. Whatever the business venture that were taken by the husband, it ended in failure due to his mental illness. In fact, when he was involved in an incident in Germany, only the appellant had helped him to return back to India safely. She has also stood as surety before the XIV Metropolitan Magistrate Court, Egmore, Chennai for releasing him



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when he was involved in an offence under Arms Act.

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8.The learned Senior Counsel had further contended that taking advantage of the illness on the part of the respondent, his parents and his brother are attempting to snatch away the property and he had also sold away some properties for a throw away price. The learned XIV Metropolitan Magistrate, Egmore, Chennai had granted bail only on a condition that the petitioner should be granted proper medical treatment and he should be taken care of properly. When the respondent was prevented from taking care of her husband, there was every possibility of relapse of bipolar disorder. The wife had withdrawn her surety only on the ground that the husband had not come forward to live with the wife but he had chosen to stay with his parents where he was not provided with proper treatment.

9.The learned Senior Counsel had further contended that the petitioner was implicated in a criminal case under Arms Act for using pistol. When attempt was made by him to return to the matrimonial home at Madurai, she made a representation to the Superintendent of Police for preventing him from entering into the matrimonial home. Such request

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was made only considering the safety and welfare of the minor children.

Therefore, the said fact cannot be considered to be a mental cruelty.

10. Since the husband was trying to sell away the residential house in which she was residing, she was constrained to issue a paper publication to the effect that taking advantage of his mental illness, her parents-in-law were attempting to alienate the properties. Therefore, in order to protect her residential rights and that of her children, she was constrained to issue such a paper publication and there is no intention to defame the family. The learned Senior Counsel had further contended that considering the involvement of the petitioner in an incident in Germany and another incident in Chennai in the year 2013 and in order to protect the properties of her husband, she had filed MHOP.No.6 of 2013. Therefore, filing of such an application can never be considered to be a mental cruelty on the part of the wife, but it was only to safeguard him personally and his property. Therefore, the finding of the trial Court that the wife is attempting to brand the husband as an insane person is not legally sustainable, in view of the medical reports. Hence, she prayed for allowing the appeal and to dismiss the divorce petition.

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Submissions of the learned Senior Counsel appearing for the respondent:

11.Per contra, the learned Senior Counsel appearing for the respondent/husband had contended that the order of the trial Judge in Paragraph No.28 will clearly establish the fact that the respondent had suffered mental cruelty at the hands of the wife. In fact, the wife had not averred any reason whatsoever to withdraw her surety given in favour of her husband. When the husband had entered into a compromise and wanted to quash the F.I.R in Crime No.348 of 2013, she had addressed a letter to the Commissioner of Police to transfer the investigation to CBCID and to file a charge sheet as against the petitioner. This will clearly show that the respondent/wife did not have any intention to live with the husband and she wanted to cause mental cruelty to the husband who had already suffered bipolar disorder.

12.The learned Senior Counsel had further contended that when the husband wanted reunion with the wife and children, the wife had sent a letter to the Superintendent of Police, Madurai requesting him to prevent the husband from entering into the matrimonial home. He had

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further contended that when the husband had returned from Germany after being admitted in a hospital, the wife had not chosen to meet him or receive him in the airport. The wife has not taken any steps to give any treatment to the husband. The wife had gone to such an extent of publishing an advertisement to the effect that the husband was suffering from mental illness, when no Court had passed any order to the said effect. The learned Senior Counsel had contended that, the wife had filed MC.No.36 of 2013 under Domestic Violence Act before the Judicial Magistrate Court IV, Madurai to prevent the husband from entering into the matrimonial home and to meet her children. Therefore, it is clear that the wife is not interested in reunion with the husband. She has also expressed that she will not permit the husband to meet the children. Moreover, she had filed MHOP.No.6 of 2013 to get a legal order of the Court to the effect that the husband is suffering from mental illness and therefore, she should be appointed as a guardian to him personally and for his properties.

13.The learned Senior Counsel had further contended that in the divorce petition, the husband has been examined as PW1 and he was



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subjected to cross examination by the learned counsel appearing for the wife. The husband was able to give cogent answers to all the questions and therefore, it is clear that the wife is making a false allegation of mental illness as against the husband which would really amount to mental cruelty. She had made publication in a newspaper alleging that her husband is a mentally ill person which has resulted in defaming not only the petitioner, but also his family members. This would certainly amount to mental cruelty.

14.The learned Senior Counsel had further contended that during cross examination, the wife had pointed out that unless he is completely cured, she is not ready to take back the husband. This would clearly establish the fact that the wife is not really interested in reunion with her husband. On one hand, she had filed the petition to appoint her as guardian for her husband, but on the other hand she had categorically pointed out that she is not ready to reunite with her husband unless he is completely cured. Hence, he prayed for confirming the order of divorce granted by the trial Court.



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15.I have considered the submissions made on either side and perused the materials available on record.

Discussion:

16.It is not in dispute that the respondent is suffering from bipolar disorder at least from the year 2000 onwards. The husband was involved in an incident in May 2000 and he was admitted to a mental hospital in West Germany. The husband was also involved in another incident in the year 2013 in Chennai in which an F.I.R was registered against him under the Arms Act. But later due to compromise, the said criminal case is said to have been quashed. These facts are not in dispute.

17.According to the husband, when he returned from Germany, after taking treatment, he was not received by his wife in the airport or she never took care of him. During cross examination, the wife had admitted that she could not specifically point out who had brought him back from Germany. Thereafter, the husband was involved in a criminal case in Crime No.384 of 2013 under Arms Act and he was released on bail in which the wife was also one of the sureties. She had chosen to withdraw her surety by filing an application under Section 444 of Cr.P.C



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on 28.10.2013. This application has been marked as Exhibit P10. In Paragraph No.14 of the counter, it is alleged that her father-in-law and her husband's brother did not make any arrangement to give treatment. Therefore, the undertaking given before the Court was not honoured. Hence, she had withdrawn the surety. However, a perusal of Exhibit P10 reveals that she is having difference of opinion with her husband and they are not in good terms ever since from the date of unpleasant incident. Therefore, it is clear that the respondent's wife had withdrawn her surety not on the ground of breach of bail condition imposed by the learned XIV Metropolitan Magistrate, Emgore, Chennai, but only due to her marital discord with her husband.

18.The husband was involved in an incident in the year 2013 in which a criminal case was lodged against him in Crime No.384 of 2013 under Arms Act. The wife having felt that the husband is attempting to compromise the matter with the apartment secretary, had addressed a letter to the Commissioner of Police, Chennai on 26.08.2013 requesting him to transfer the case to CBCID. The said communication has been marked as Exhibit P11. A perusal of this letter reveals the mind of the



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wife that her husband should not be let off and he should be continued to be entangled in the criminal case. After sending such a petition, she had chosen to withdraw her surety before XIV Metropolitan Magistrate, Egmore, Chennai under Exhibit P10. These two documents put together will clearly establish the intention of the wife to implicate the husband in a criminal case though he was attempting to exonerate himself from the said case by entering into a compromise.

19. On behalf of the wife, a paper publication has been made on 27.08.2013 to the effect that her husband is suffering from mental illness and taking advantage of the same, her father-in-law and husband's brother are attempting to alienate the property of her husband. MHOP.No.6 of 2013 has been filed by the wife to declare her husband as an insane person only on 11.09.2013. Even before filing of the said application, this paper publication has been made to the effect that her husband is not in good mental health. The said paper publication has been marked as Exhibit P13. The wife had filed D.V.O.P. before the Judicial Magistrate No.IV, Madurai in September 2013 with a prayer as

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against her husband, father-in-law and her husband's brother seeking an order under Section 18 to prohibit the act of Domestic Violence as against her and her children. She has also sought to prohibit the respondents from entering into the educational institution where the applicant's children are studying. She had sought to prohibit alienation of assets by the respondents. She had further sought for a prohibition as against the respondent to stay away from the applicant and her children. Therefore, it is clear that the wife wants to stay away from the husband and to make her children also to stay away from the husband.

20.It is alleged by the appellant's husband that the wife had lodged a complaint to the Superintendent of Police, Madurai to prevent him from entering into the house. The said fact is admitted by the wife in Paragraph No.19 of the counter and she had explained that only because of the fact that the husband has attempted to alienate the property, she had prevented him. A perusal of Paragraph No.19 of the counter clearly indicates that the prospective buyer had cancelled the sale transactions and thereafter, the wife had lodged a complaint before the Superintendent

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of Police to prevent the husband from entering into the matrimonial home. It is not known under what provisions of law, the wife had approached the police authorities to restrain her husband from entering into the matrimonial home without any formal orders of the Court. However, she was successful in preventing him from entering into the home.

21.From the entire pleadings and records, it could be seen that the wife was not aware of the medication of her husband and also she was not willing to help him. She had even gone to the extent of withdrawing her surety afforded as a bail condition for releasing him and she had chosen to request the police to transfer the case to CBCID so that her husband would not get exonerated in the criminal case by way of any compromise. The wife had approached the police authorities to prevent her husband from entering into the matrimonial home.

22.The discussion above will also disclose that the wife on one hand alleges that her husband is affected by bipolar disorder and taking



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advantage of the same, his parents are controlling him. On the other hand, she refuses to reunite with her husband and had continuously approached the police authorities to entangle him in a criminal case and prevented him from entering into the matrimonial home. She had gone to the extent of making a paper publication in “Thinathanthi” that her husband is not a mentally sound person and no one should approach him for purchasing any property. All these facts will clearly establish that a person already suffering from bipolar disorder who miserably requires love and affection and proper medication, has been treated with mental cruelty by the wife.

23.The trial Court has rightly observed that the wife has been continuously attempting to brand her husband as a mentally ill person when he has been declared to be mentally fit by the medical authorities. Admittedly, there is no violent incident after 2013 on the side of the husband. Instead of showing love and affection, the wife had chosen to distance herself from her husband.



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24. In view of the above said deliberations, this Court does not find any infirmity or illegality in the order of divorce granted by the trial Court. This Civil Miscellaneous Appeal lacks merits and the same stands dismissed. No costs.

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

To

1. The I Additional District Judge, Madurai
2. The Record Keeper,
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.A(MD)No.150 of 2017

17.07.2023