



C.M.S.A(MD)No.31 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 25.07.2023

PRONOUNCED ON:01.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.S.A(MD)No.31 of 2017

and

C.M.P.(MD)No.9445 of 2017

Sivakami : Appellant/Respondent/
Respondent

Vs.

P.Gunasekaran : Respondent/Appellant/
Petitioner

PRAYER:- Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act r/w Section 100 of the Code of Civil Procedure against the judgment and decree dated 17.08.2017 passed in C.M.A.No. 15 of 2017, on the file of the Additional District Court / Fast Track Mahila Court, Karur reversing the judgment and decree dated 07.10.2015, passed in H.M.O.P.No.49 of 2015, on the file of the learned Subordinate Judge, Kulithalai.



WEB COPY



C.M.S.A(MD)No.31 of 2017

For Appellant : Mr.M.P.Senthil
For Respondent :No Appearance

JUDGMENT

The Civil Miscellaneous Second Appeal is directed against the fair and decreetal order passed in C.M.A.No.15 of 2017, dated 17.08.2017, on the file of the Additional District Court (Fast Track Mahila Court), Karur, challenging the fair and decreetal order passed in H.M.O.P.No.49 of 2015, dated 07.10.2015, on the file of the Subordinate Court, Kulithalai.

2. Admittedly, the marriage between the appellant and the respondent was solemnised on 27.08.2004 at Arulmighu Dhandayuthapani SwamyThirukovil, Palani and due to their wedlock, they were blessed with a female child Rajeswari on 04.12.2005.

3. For the sake of convenience and brevity, the parties will be referred as per their status and ranking in the trial Court.



WEB COPY



C.M.S.A(MD)No.31 of 2017

4. The case of the petitioner in short is as follows:

The petitioner had studied upto 9th std., and the respondent is a graduate in commerce and she is holding B.Ed., degree. Taking advantage of her education, she developed superiority complex and she always wants to have a command over the petitioner in all aspects. The respondent used to pick up quarrels with the petitioner for flimsy reasons and she used to scold the petitioner for nothing. She did not attend any household works which created problems in the family. She used to go to her parental home very often. After conceiving, she left her parental home without the consent and knowledge of the petitioner. The petitioner and his well wishers had convened a panchayat and brought the respondent back to the matrimonial home. Though she had stayed with the petitioner for a week, she left to her parental home along with her belongings including the jewels. She delivered a female baby and even thereafter she did not mend her attitude and behaviour. Despite the effective steps to bring back the respondent and the child, the same was of no avail. The respondent deserted the petitioner for a continuous period of six years from January 2005 without any valid and justifiable reasons. The respondent is not discharging her duties and is not providing conjugal relationship to the petitioner. The respondent had



C.M.S.A(MD)No.31 of 2017

WEB COPY

instigated her father and relatives to coerce the petitioner in one way or the other and in pursuance of the same, they came to the residence of the parents at Alagapuri and threatened them with dire consequences. The above acts and conduct of the respondent had caused mental cruelty to the petitioner. Hence, the petitioner is constrained to file the divorce petition.

5. The defence of the respondent is as follows:

The respondent, after marriage has completed her B.Com., course and Diploma course in physical education, as per the directions and advise of the petitioner. The petitioner had cordial relationship with the respondent for a period of one month since the marriage. When some disputes arose between the petitioner and his family members, the respondent came to know that the petitioner is having illicit affairs with one Kannammal, W/o Ayyavu @ Nathan, who is residing nearby. The respondent's efforts to sever the relationship between her husband the said Kannammal ended in vain. Due to the extra marital relationship with the said Kannammal, the petitioner used to pick up quarrels very often with the respondent and used to attack her. The petitioner had attacked the respondent and inflicted injuries in the presence of others



C.M.S.A(MD)No.31 of 2017

WEB COPY

including the said Kannammal. The petitioner, in May 2007, by causing harassment had sent the respondent and her female child out of the matrimonial home. When the respondent came to attend a house warming ceremony as requested by the petitioner's parents, the petitioner by raising unnecessary issues, attacked the respondent and sent her out of the home. Considering the family prestige and the welfare of the minor daughter, the respondent is ready and willing to condone the illicit relationship of her husband and to live with him.

6. During enquiry, the petitioner has examined himself as P.W.1 and one Prabhu as P.W.2., and exhibited 7 documents as Exs.P.1 to P.7. The respondent has examined herself as R.W.1 and three other witnesses as R.W.2 to R.W.4 respectively and exhibited 12 documents as Exs.R.1 to R.12. The learned trial Judge, upon considering the evidence both orally and documentary and on hearing the arguments of both sides, has passed an order dated 07.10.2015 dismissing the divorce petition. Aggrieved by the dismissal, the petitioner/husband has preferred an appeal before the District Court, Karur and the learned Additional District Judge, Fast Track Mahila Judge, Karur, considering the materials available on record and on hearing the arguments of both sides, has



C.M.S.A(MD)No.31 of 2017

WEB COPY

passed the impugned order dated 17.08.2017 allowing the appeal and thereby setting aside the fair and decreetal order passed in C.M.A.No.15 of 2017 and granted divorce. Aggrieved by the order granting divorce, the respondent/wife has preferred the present appeal.

7. At the time of admitting the appeal, the following substantial questions of law were framed:

“1. Whether the order of the 1st Appellate Court is right in law in granting divorce by reversing the order of the Trial Court that too assigning a reason for granting divorce which is not even pleaded by the respondent in his petition in H.M.O.P.No.49 of 2015 before the Trial Court?

2. Has not the 1st Appellate Court committed a serious error in law in granting divorce on mere surmises and conjectures, misconstruing as if the petitioner has committed cruelty without adverting to the scope and ambit of section 10(1)(1-a) of Hindu Marriage Act that too by traversing beyond the pleadings?

3. Whether the order of the 1st Appellate Court could be sustained in law in granting divorce on mere perverse appreciation of the evidence,



C.M.S.A(MD)No.31 of 2017

especially without advertg to the specific admission of P.W.1, the evidence of R.W.1 and the evidence of independent witnesses R.W.2 and R.W.3 in a right perspective?”

8. It is pertinent to note that the petitioner/husband has laid the divorce petition seeking divorce on the grounds of cruelty and desertion. The learned trial Judge, by holding that the husband has failed to prove the grounds of cruelty and desertion, dismissed the divorce petition. In the appeal, the learned Additional District Judge has confirmed the finding of the trial Court that the ground of cruelty was not proved. Moreover, the appellate Judge has also given a finding that the allegations raised by the husband to show that the same would amount to mental cruelty are of trivial matters and as such, no importance could be attached to them. But the learned appellate Court, taking note of the allegations raised in the counter statement that the petitioner had extra marital affairs with one Kannammal and that the same was not substantiated by the respondent, has come to a decision that the petitioner is entitled to get divorce on the ground of cruelty as he would have suffered by accusation of adultery at the hands of the respondent and the relevant passage is extracted hereunder:



C.M.S.A(MD)No.31 of 2017

“However, the respondent in her counter and evidence has stated that the petitioner had developed illicit intimacy with one Kannammal who is the neighbour of the petitioner's house. But, no steps was taken by the respondent to implead the said Kannammal as a party to the proceedings under Order 1, Rule 10(2) C.P.C. Further she was not summoned to adduce evidence in this regard. In the circumstances, the accusation of adultery against a woman cannot be accepted. It is true that the respondent has examined R.W.2 and R.W.3 to establish adultery. But, their evidence would prove that they are close relative of the respondent and also they are living in a far away place from the residence of the petitioner. No independent evidence from the local area of the petitioner was examined to speak about the alleged adulterous life. Therefore, the finding of the trial Court that the respondent has proved the adultery of the petitioner with one Kannammal cannot be accepted. As already stated when Kannammal is not a party to the proceedings and when she was not examined in this case, the accusation of adultery is against the well established principles of law and natural justice as the character assassination would affect the future of the said lady. Hence, this Court decides that the respondent failed to prove adulterous life of the petitioner with one Kannammal. As such, the petitioner is entitled to divorce on the ground of mental cruelty as he would have suffered by accusation of adultery at the hands of the



C.M.S.A(MD)No.31 of 2017

WEB COPY

respondent. But, the trial Court has not properly appreciated available evidence on record in this aspect.”

9. Admittedly, the divorce petition came to be filed by the appellant/husband. Hence, the question of impleading the said Kannammal in the divorce petition by the respondent does not arise at all. This Court is constrained to say that the observation of the learned appellate Judge that the respondent has not taken any steps to implead the said Kannammal, that the said Kannammal was not summoned to adduce evidence, that the respondent has not examined any other independent evidence to speak about the alleged adulterous life and that therefore, the finding of the trial Court that the respondent has proved the adulterous life of the petitioner with Kannammal, cannot be accepted as the same are totally absurd and untenable. The learned Subordinate Judge has nowhere given a finding that the respondent has proved the adulterous life of the petitioner with the said Kannammal. The respondent has not filed any application claiming divorce and as such, the question of impleading adulterer and proving of adultery does not arise at all.



C.M.S.A(MD)No.31 of 2017

WEB COPY

10. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in *Narendra Vs. K.Meena* reported in (2016)9 SCC 455, wherein the Hon'ble Apex Court has held that the unsubstantiated extra marital affairs allegations levelled by the wife against her husband would amount to mental cruelty and the relevant passages are extracted hereunder:

“16. We have carefully gone through the evidence but we could not find any reliable evidence to show that the Appellant had an extra-marital affair with someone. Except for the baseless and reckless allegations, there is not even the slightest evidence that would suggest that there was something like an affair of the Appellant with the maid named by the Respondent. We consider levelling of absolutely false allegations and that too, with regard to an extra-marital life to be quite serious and that can surely be a cause for mental cruelty.

17. This Court, in the case of *Vijaykumar Ramchandra Bhate v. Neela Vijaykumar Bhate*, 2003 (6) SCC 334 has held as under:-

“7. The question that requires to be answered first is as to whether the averments, accusations and character assassination of the wife by the appellant husband in the written statement constitutes mental cruelty for sustaining the claim for divorce under Section 13(1)(i-a) of the Act. The



WEB COPY



C.M.S.A(MD)No.31 of 2017

position of law in this regard has come to be well settled and declared that levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extramarital relationship is a grave assault on the character, honour, reputation, status as well as the health of the wife. Such aspersions of perfidiousness attributed to the wife, viewed in the context of an educated Indian wife and judged by Indian conditions and standards would amount to worst form of insult and cruelty, sufficient by itself to substantiate cruelty in law, warranting the claim of the wife being allowed. That such allegations made in the written statement or suggested in the course of examination and by way of cross-examination satisfy the requirement of law has also come to be firmly laid down by this Court. On going through the relevant portions of such allegations, we find that no exception could be taken to the findings recorded by the Family Court as well as the High Court. We find that they are of such quality, magnitude and consequence as to cause mental pain, agony and suffering amounting to the reformulated concept of cruelty in matrimonial law causing profound and lasting disruption and driving the wife to feel deeply hurt and reasonably apprehend that it would be dangerous for her to live with a husband who was taunting her like that and rendered the maintenance of matrimonial home impossible.”



C.M.S.A(MD)No.31 of 2017

18. Applying the said ratio to the facts of this case, we are inclined to hold that the unsubstantiated allegations levelled by the Respondent wife and the threats and attempt to commit suicide by her amounted to mental cruelty and therefore, the marriage deserves to be dissolved by a decree of divorce on the ground stated in [Section 13\(1\)\(ia\)](#) of the Act.”

11. In the case of ***K.Srinivas Rao Vs. D.A.Deepa*** reported in ***(2013)5 SCC 226***, the Hon'ble Supreme Court has held as follows:

“14. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”

12. In the case on hand, the respondent, in order to prove her defence that the petitioner was having illicit affairs with the said



C.M.S.A(MD)No.31 of 2017

WEB COPY

Kannammal, has examined two panchayatars viz., Nagulsamy and Subburayan as R.W.2 and R.W.3 respectively. When the petitioner as P.W.1 was cross-examined, he would specifically admit that Aadavan Subramanian S/o Arumuga Gounder, Venkatachalam S/o Palaniappan, Manivasagam and Nagulsamy are all his relatives (பட்தாஸ்தள்). But he would deny that the said panchayatars had informed that his wife was ready to live with him, in case if he changes his attitude. P.W.1 would immediately say that his wife had demanded Rs.25,00,000/- cash and 50 cents of land. He would admit that the above aspects can be ascertained, if the above mentioned relatives are examined. Admittedly, he has not taken any steps to examine anyone of the above said five panchayatars. But on the other hand, the respondent has examined R.W.2 and R.W.3. R.W.2 and R.W.3 in their evidence would say that they were aware about the illicit relationship of the petitioner with the said Kannammal. They would say that the respondent agreed to live with the petitioner, if the petitioner severs his relationship with the said Kannammal and that when the same was informed to the petitioner, he has refused to accept the same.



C.M.S.A(MD)No.31 of 2017

WEB COPY

13. Considering the evidence of R.W.2 and R.W.3, as rightly contended by the learned Counsel for the appellant, the respondent has shown *prima facie* case for her charges levelled against the petitioner. Since the respondent has shown *prima facie* case, then it is for the petitioner to prove that the allegations of the respondent that he had illicit affairs with the said Kannammal is absolutely false. The petitioner in an attempt to prove the ground of desertion, has examined his own employee as P.W.2 and except that witness, he has not chosen to examine any other witness.

14. It is necessary to refer the judgment of the Hon'ble Supreme Court in ***Ramchander Vs. Ananta*** reported in ***(2015)11 SCC 539***, relied on by the learned Counsel for the appellant and the relevant passage is extracted hereunder:

“The last instance of cruelty alleged by the husband is the allegation made by the wife that he has been involved in an extra marital affair with the daily rated mazdoor lady working under him. It is true that the defendant-wife has named the said lady with whom her husband allegedly was



C.M.S.A(MD)No.31 of 2017

WEB COPY

having an affair. The plaintiff-husband though admitted that the said lady was working under him, has specifically denied the said allegation. The courts below have concurrently found that the wife has not substantiated the said allegation. Mere failure to prove such allegation would not entitle the husband to a decree of divorce as rightly held by the High Court. The conduct of the wife that had been complained of appears to be not so grave and weighty that it can be treated to be more serious than ordinary wear and tear of married life.”

15. In the above decision case, though the wife has alleged that her husband was involved in an extramarital affairs with the mazdoor lady working under him, the Courts below have held that the wife has not substantiated the said allegation, but the Hon'ble Apex Court by observing that mere failure to prove such allegation would not entitle the husband to a decree of divorce as rightly held by the High Court and dismissed the appeal.



C.M.S.A(MD)No.31 of 2017

WEB COPY

16. In ***K.Srinivas Rao's case*** and in ***Narendra's case*** above referred, the baseless and reckless allegations including the extramarital affairs raised by the wife remained unsubstantiated and as such, the Hon'ble Apex Court, by observing that making unfounded, indecent, baseless and reckless allegations would amount to mental cruelty. As already pointed out, in the case on hand, the respondent has shown prima facie case for the charges levelled by her against the petitioner.

17. When the matter was taken up on 25.07.2023, the learned Counsel for the appellant has filed second additional typed set of papers, mainly containing the copies of the orders passed by the Courts below, by this Court and by the Hon'ble Supreme Court. Though the above are not in evidence, this Court can very well take judicial notice of the orders passed by the Courts below and the orders passed by this Court as well as by the Hon'ble Supreme Court.

18. It is evident from the records that one Baba Natarajan Prasanth has filed a private complaint against his wife Revathy, wife's parents and also against the petitioner herein alleging that his wife has entered into a



C.M.S.A(MD)No.31 of 2017

WEB COPY

second marriage with the petitioner – Gunasekaran, while their first marriage was subsisting, that the Judicial Magistrate Court No.6, Coimbatore, after trial, has passed a judgment dated 26.07.2019, convicting the said Revathy and Gunasekaran for the offence under Section 494 I.P.C., and sentenced them to undergo one year Rigorous Imprisonment and fine and acquitted the accused 3 and 4 – parents of the said Revathy, that the accused Revathy and Gunasekaran have preferred the Criminal Appeals in CrI.A.Nos.249 and 250 of 2019, that the III Additional District and Sessions Judge, Coimbatore, upon hearing the arguments of both sides in the said appeals along with the appeals filed by the defacto complainant, has passed a common judgment dated 19.04.2021, setting aside the judgment of conviction and sentence passed by the Judicial Magistrate and thereby acquitted the accused, that the complainant has then preferred appeals before this Court in CrI.A.Nos. 635, 647 and 648 of 2021 and a learned Judge of this Court has allowed the appeals, by setting aside the judgment of acquittal passed by the appellate Court, restored the conviction of the trial Court and imposed punishment directing the said accused to undergo imprisonment till the rising of the Court and levied the fine amount of Rs.25,000/- each and that the defacto complainant has filed a Special Leave Petition in Special



C.M.S.A(MD)No.31 of 2017

WEB COPY

Leave Petitions (Criminal) Nos.11461 and 11824 of 2022 and the same are pending.

19. It is further evident from the said records that the petitioner herein and the said Revathy have entered into their marriage on 09.04.2017 at Maruthamalai Murugan temple, Coimbatore, even before granting of divorce by the appellate Court to the petitioner.

20. Considering the above, the finding of the appellate Court that the allegations raised in the counter statement of the respondent would amount to mental cruelty is not proper and is very much against the evidence available on record. Hence, this Court has no hesitation to hold that the impugned order granting divorce is liable to be set aside and the substantial questions of law are answered accordingly.

20. In the result, the Civil Miscellaneous Second Appeal is allowed and the impugned fair and decreetal order dated 17.08.2017, passed in C.M.A.No.15 of 2017, on the file of the Additional District Court / Fast Track Mahila Court, Karur is set asid and the fair and decreetal order passed in H.M.O.P.No.49 of 2015, on the file of the



C.M.S.A(MD)No.31 of 2017

WEB COPY

Subordinate Court, Kulithalai in dismissing the divorce petition stands restored. No costs. Consequently, the connected Miscellaneous Petition is closed.

01.09.2023

Index : Yes : No

Internet : Yes : No

SSL

To

- 1.The Additional District Court / Fast Track Mahila Court,
Karur.
2. The Subordinate Court, Kulithalai.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.S.A(MD)No.31 of 2017

K.MURALI SHANKAR,J.

SSL

PRE-DELIVERY JUDGMENT MADE IN

C.M.S.A(MD)No.31 of 2017

01.09.2023