



C.M.A.(MD).No.1201 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 16.10.2023

Delivered on: 08.11.2023

CORAM:

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

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J.Janakiram

... Appellant / Petitioner

Vs.

M.Sathyabama

... Respondent / Respondent

Prayer:- Appeal filed under Section 19 of Family Courts Act, 1955, read with Section 104 of the Code of Civil Procedure, against the judgment and decree, dated 03.09.2022, made in H.M.O.P.No.82 of 2020, on the file of the Family Court, Srivilliputtur.

For Appellant : Mr.J.Thomas Rajadurai

For Respondent : Mr.M.Sankar

JUDGMENT

P.B.BALAJI,J.

The unsuccessful husband before the Family Court in H.M.O.P.No.82 of 2020, aggrieved by the dismissal of his petition for division, is the appellant before us.



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2. The brief facts of the case are as under:

The husband filed H.M.O.P.No.82 of 2020, seeking dissolution of his marriage with the respondent on the grounds of cruelty and desertion. The appellant and the respondent were married on 25.10.2009 and on an earlier occasion, H.M.O.P.No.214 of 2014 was filed by the husband, seeking dissolution of marriage, on the ground that the respondent - wife had alleged that the appellant - husband had an illicit affair with Ramani. However, the said H.M.O.P was withdrawn, in order to save the matrimonial life. However, again the respondent came up with a new allegation that the appellant was having an illicit affair with one Amaladevi and that the respondent has also repeatedly given several complaints to the higher officials of the appellant, without any basis, whatsoever. All these acts of the wife had given mental agony to husband. Further, insofar as desertion, the appellant alleges that the wife has left the matrimonial home and has been living with her mother for over 5 years, without any justifiable cause and therefore, the appellant sought for dissolution of marriage on both the grounds of cruelty as well as desertion.



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3. The respondent / wife resisted the said application. It is the case of the respondent that as she was working as a teacher, it was convenient to attend her work if she stayed with her mother and only under such circumstances, that too, with the consent of her husband, the respondent was staying with her mother. The respondent chose to reiterate the allegation with regard to the illicit affairs of the appellant and the respondent sought for dismissal of the petition for divorce.

4. Before the Family Court, on the side of the appellant, the appellant examined himself as P.W.1 and his mother – Vijayakumari examined as P.W.2 and one Kalavathy examined as P.W.3 and 2 documents were marked as Ex.P1 to Ex.P2. On the side of the respondent, wife examined herself as R.W.1 and 3 documents were marked as Ex.R1 to Ex.R3, in which, Ex.R1 and Ex.R3 were photographs showing the appellant being with Amaladevi. Ex.P2 and Ex.R2 are photographs taken with the appellant and the respondent being together.



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5. On appreciating the oral and documentary evidence adduced before it, the Family Court finding that the appellant had not proved his allegation of cruelty meted out by his wife and also desertion, dismissed the petition seeking dissolution of marriage.

6. Aggrieved by the same, the husband has preferred the present Civil Miscellaneous Appeal on the grounds that the Family Court failed to see that repeated allegations of illicit affairs levelled against the appellant would amount to mental cruelty; the Family Court has not considered that the photographs exhibited (Ex.R3) by the respondent showing the appellant to be with an another lady were not admissible in evidence as Section 65(B) of the Indian Evidence Act, 1872, was a bar; the Family Court failed to see that despite a similar allegation of the appellant having an illicit affair earlier which compelled the appellant to approach the Family Court in H.M.O.P.No.214 of 2014 for divorce, the same was withdrawn by the appellant in order to save the matrimonial tie; the respondent was not able to prove that the appellant was having an illicit affair and making such wild allegations, certainly caused mental destruction, agony, warranting an order of dissolution; the allegations



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levelled by the respondent are baseless, which damage the self esteem of the appellant which would certainly come within the four corners of the "mental cruelty" as defined under the Hindu Marriage Act.

7. We have heard Mr.J.Thomas Rajadurai, learned counsel for the appellant and Mr.M.Sankar, learned counsel for the respondent.

8. The learned counsel for the appellant would contend that the Family Court erred in not taking proper note of the conduct of the respondent wife alleging that the appellant was having illicit affairs with different women and also giving repeated complaints to the higher authorities of the appellant. The learned counsel would rely upon the judgment in a case of *Vijayakumar Ramchandra Bhate V. Neela Vijaykumar Bhate* reported in *2003-6-SCC-334*, where a party to the marriage seeks dissolution of marriage, proof of cruelty would not necessarily depend upon any particular period or number of incidents of cruel treatment and it would only depend on stigmatic effect of such case of criminal complaint, even if met out even once. In the case of *K.Srinivas Rao V. D.A.Deepa* reported in *2013-5-SCC-226*, relied on by the learned counsel for the appellant, for the proposition that making unfounded,



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indecent defamatory allegations against the spouse or even his or her relatives in the pleading, filing of complaints or issuing of notice or news items which may have adverse impact on the business prospect or the job and filing repeated false complaints and cases in the Court against the spouse would, in the facts of a case, amount to cause mental cruelty to the other spouse.

9. The learned counsel for the appellant would also rely upon a judgment of the Hon'ble Supreme Court in ***Civil Appeal Nos. 4984 and 4985 of 2021 (Sivasankaran V. Santhimeenal)***, dated 13.09.2021, for the proposition that where there has been a harassment by the wife at the place of work of the husband, including insulting him in front of Students and Professors and threatening the husband of physical harm in front of his colleagues cannot be brushed aside and held that such conducts of the wife would amount to cruelty.

10. The learned counsel for the appellant would also state that the Family Court erred in looking into the photographs filed by the respondent. He would submit that reliance placed on such photographs



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were perverse on two counts, namely, (i) photographs were not shown to be produced from proper custody and (ii) as per Section 65 (B) of the Indian Evidence Act, the said photographs could not have been received in evidence much less looked into by the Family Court, much less arrive at a decision based on the said evidence filed by the wife.

11. The learned counsel for the respondent wife would submit that the trial Court has rightly appreciated the oral and documentary evidence and come to the conclusion that the acts of complaints by the respondent would not have in any way resulted in mental cruelty for the appellant and therefore, the learned counsel for the respondent would pray for the appeal to be dismissed.

12. Insofar as the contention of the learned counsel for the appellant that the photographs on which the Family Court placed reliance ought not to have been received in evidence or looked into on the ground that Section 65(B) certificate contemplated under the Indian Evidence Act had not been filed along with the said photographs and that the photographs also had not come from proper custody, we would straightaway refer to Section 14 of the Family Courts Act and the same is



extracted hereunder:

*“14. Application of Indian Evidence Act, 1872.-
A Family Court may receive as evidence any report,
statement, documents, information or matter that may,
in its opinion, assist it to deal effectually with a dispute,
whether or not the same would be otherwise relevant or
admissible under the Indian Evidence Act, 1872 (1 of
1872).”*

13. Thus, it is seen that Rules of evidence applicable under the Indian Evidence Act are not applicable to proceedings before the Family Court and later portion of Section 14 clearly stipulates that the Family Court is entitled to receive in evidence, any document if in its opinion it would assist the Court to deal with the dispute effectively, even if the said document is not relevant or admissible under the Indian Evidence Act, 1872. Therefore, we reject the said contention of the learned counsel that the Family Court erred in receiving the photographs and also placing reliance on the same in the absence of 65(B) certificate. Insofar as the photographs not being produced from proper custody, it is the case of the respondent in her cross examination that the photographs were sent to her by Amaladevi with whom the appellant was alleged to have an illicit



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relationship. However, P.W.1-appellant in the cross examination has denied the genuineness of the said photographs and has categorically asserted that the photographs have been morphed. The Family Court has elaborately discussed the said evidence of the appellant and the respondent and placing reliance on Sections 103 to 106 of Indian Evidence Act held that when the appellant alleges that the photographs were morphed, the burden was upon the appellant to establish the same. However, the appellant having taken no steps in that regard, the Family Court proceeded to look into the photographs and give a finding that the respondent had proved that the appellant was having illicit relationship with said Amaladevi. The Family Court has further found that the contention of the respondent / wife that the divorce petition was filed only in order to facilitate the appellant to marry the said Amaladevi cannot be ruled out also. The Family Court has also appreciated the oral and documentary evidence and found that the plea of the appellant that right from 2013, he was living separately from the respondent / wife was false and has specifically given a finding that the appellant and the respondent though having quarrels between themselves, lived together until 2020.



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14. The Family Court has also relied on the evidence of the appellant's mother, who was examined as P.W.2. The mother of the appellant deposed that the respondent took very good care of her other son, who had met with an accident and the mother had to go to Rajasthan to be with her daughter, who was pregnant and that during such time, the respondent / wife took very good care of the appellant's brother. Further, the Family Court has found that the various incidents that had been cited by the appellant as amounting to mental cruelty were only day-to-day disputes and quarrels which would not amount to mental cruelty, warranting dissolution of marriage, under the provision of the Hindu Marriage Act.

15. The Family Court has also held that the appellant has not been able to establish by sufficient and satisfactory evidence that the respondent has treated him with mental cruelty, insofar as the complaints given by the respondent to the higher officials and held that the complaints were given only to secure her and protect herself and only after the complaints, the respondent started receiving money for maintaining herself and her minor child. We therefore, agree with the finding of the Family



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Court in this regard that the complaints were not intended to defame the appellant or bring down his reputation before the higher officials. As rightly found by the Family Court, the appellant not paying any money to the respondent to take care of herself and the minor son, forced the respondent to give complaints to the higher officials and the same cannot be termed as acts amounting to mental cruelty.

16. We now proceed to discuss the decisions relied on by the learned counsel for the appellant. In *Vijayakumar's* case, the facts of the case before the Hon'ble Supreme Court, were on an entirely different footing. In that case, the wife had sought for dissolution of marriage on the ground of cruelty and the appellant had filed the written statement stating that there is an illicit relationship with the neighbour's son. Therefore, the husband sought to withdraw such allegation by amendment of such written statement, which was also allowed by the trial Court. However, from the evidence on record, the Hon'ble Supreme Court found that even though the written statement was amended, the trial Court took note of the allegations made by the husband against the wife and held in favour of the wife. In this regard, the Hon'ble Supreme Court held that



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"levelling disgusting accusations of unchastity and indecent familiarity with a person outside wedlock and allegations of extra marital relationship is a grave assault on the character, honour, reputation, status as well as affect the health of the wife" and would amount to the worst form of insulting and cruelty on an Indian wife and that therefore it would amount to cruelty in law warranting the claim of the wife being allowed. However, in the instant case, we have already discussed the evidence adduced before the Family Court. The complaints that were alleged by the respondent were only to ensure that the appellant was financially taking care of her and the child born to them. There was no attempt to bring down the name of the appellant or defame him before the higher authorities. Therefore, the decision relied on by the learned counsel for the appellant cannot be applied to the facts of the present case. Moreover, it is relevant to note that it is only the appellant who come to the Court alleging that his wife having an illicit relationship. It was not the case of the appellant that the respondent was going about in public or the family circles making false allegations that her husband had been having illicit relationship with various women. Therefore, the facts of the case before the Hon'ble Supreme Court in ***K.Srinivas Rao's*** case would also stand on an entirely



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different footing.

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17. In *Civil Appeal Nos. 4984 and 4985 of 2021, Sivasankaran's* case referred supra, the Hon'ble Supreme Court found that the wife went out of the way to ensure that her husband loses his job and that it would amount to cruelty. No doubt, to continue allegations and litigative proceedings would amount to cruelty in the facts of a given case. However, here, it is only the husband, who sought for divorce alleging that his wife had falsely alleged that she was having an illicit relationship with a woman by name Ramani. However, admittedly, the said petition was not prosecuted and the appellant and the respondent were living together thereafter and again, his wife has been falsely lodging complaints that he has an illicit relationship with one Amaladevi. Therefore, it is not a case where the respondent / wife has approached the Court seeking any relief and indulged in continuing to make allegations and litigative proceedings.

18. We find that the order of the Family Court holding that the acts and complaints of the appellant would not amount to mental cruelty,



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warranting a decree of dissolution of marriage, to be perverse or infirm.

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The Family Court has discussed all the contentions put forth by the learned counsel for the appellant as well as the learned counsel for the respondent judiciously and answered the issue holding that the acts and complaints of the appellant would not constitute "mental cruelty" in order to bring it within the definition of Section 13 (1)(i-a) of the Hindu Marriage Act.

19. In fine, the instant Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

(T.K.R.J.) & (P.B.B.J)
08.11.2023

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

Ls

To

1.The Family Court,
Srivilliputtur.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

judgment in
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08.11.2023