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C.M.A.No.1306 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM

**THE HONONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONONOURABLE MR. JUSTICE P.DHANABAL**

**C.M.A.No.1306 of 2012
and
M.P.No.1 of 2012**

M.Raj @ Christudoss

... Appellant

Vs.

N.Shanmuga Priya

...Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, against the judgment and decree dated 29.03.2012 made in F.C.O.P.No.13 of 2020 on the file of the learned Principal Judge, Family Court, Chennai.

For Appellant : Mr.V.Balasubramanian

For Respondent : Mr.V.Anilkumar

J U D G M E N T

(The Judgement of the Court was delivered by J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been filed as against the judgment and decree dated 29.03.2012 passed in F.C.O.P.No.13/2010 on the file of the Principal Judge, Family Court, Chennai, granting divorce.



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2. The brief facts of the case of the appellant are that the appellant married the respondent on 17.08.2001 as per Christian rites and customs. Due to wedlock, they begotten two children. The respondent/wife filed a petition before the lower Court for divorce on the ground of cruelty and the appellant herein resisted the same by filing counter. However, the lower Court, only on considering the oral evidence adduced by the respondent side has granted the decree of divorce. Hence, the present appeal.

3. Learned counsel for the appellant would state that the divorce petition was filed on the ground of cruelty but the respondent/wife has not proved that the same. The further allegation of the respondent against the appellant that he is not maintaining the family was also not proved. Even when the respondent was cross examined as P.W.1, she had categorically stated that her father is not helping her for running the family. Therefore, it is proved that only the appellant is maintaining the family. It was also alleged by the respondent that the appellant had assaulted the respondent and the appellant married one Beula. The said allegation was also not proved. The respondent did not give any complaint to the police for assaulting her and she did not file any



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document to prove the alleged marriage of the appellant with Beula.

Without considering all these aspects and without any basis, the lower Court had erroneously passed the decree of divorce as against the appellant. Hence, the learned counsel prays to set aside the judgement and decree passed by the lower Court.

4. Per contra, learned counsel appearing for the respondent would state that though the appellant and the respondent loved each other and got married with the consent of their parents, the appellant did not spare a single paise to meet the domestic expenses and education expenses of the children. When the same was questioned, the appellant assaulted her and abused her in unparliamentary words and harassed her both physically and mentally and the same had become a routine affair in day to day life. Further, the appellant pressurized the respondent to bring more money from her parents for his extravagance. The appellant created unhealthy atmosphere in the marital home. The appellant had association with anti-social elements and was also arrested in a case of attempt to murder and later, remanded to judicial custody. The respondent mobilized funds and spent about Rs.2 lakhs for getting the appellant on bail. But the appellant did not chose to clear the debts borrowed by the



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respondent for his release on bail. When the respondent advised him to rectify his adamant character, he threatened her and assaulted her. Further, the appellant developed intimacy with another lady viz., R.Beula. When the respondent lodged a complaint against him before the All Women Police Station, he accepted that he had married her. Thereafter, the appellant deserted the respondent and two children and is living with the said Beula. The appellant had deserted the respondent and two children and unable to tolerate the cruelty, the respondent came under the shelter of her parents along with her children. Therefore, the learned counsel for the respondent would state that only on considering all the above factual aspects, the lower court had granted the decree of divorce and the same need not be interfered with.

5. Heard the learned counsel for the appellant, learned counsel for the respondent and perused the materials available on record.

6. It is not in dispute that the respondent is a Hindu and the appellant is a Christian and they got married as per the Christian rites and customs. Due to wedlock, two children were born to them. From the records, it is seen that the appellant did not provide any monetary help to the respondent. The evidence of P.W.2, who is the father of the



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respondent, would also go to show that he is only looking after his daughter and her children till date and the appellant used abusive language and beat his daughter when she questioned his irresponsible behaviour. The second marriage of the appellant with one Beula and that he got a girl child through Beula was also proved by examining one P.W.3, who is none other than the cousin brother of the appellant. Contracting second marriage while the first marriage is in existence would not only amount to bigamy but also amount to cruelty.

7. In view of the above, we are of the view that the lower Court, on considering the oral and documentary evidence had rightly granted divorce on the ground cruelty, with which, we find no infirmity or illegality to interfere with. Accordingly, the Civil Miscellaneous Appeal fails and the same stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(J.N.B,J.) (P.D.B., J.)

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J. NISHA BANU, J.
and
P.DHANABAL,J.

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To

The Principal Judge,
Family Court,
Chennai.

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