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C.M.A.No.2412 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU
and
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A. No.2412 of 2016
and
C.M.P. No.16826 of 2016

Praba Balasubramanian

... Appellant / Respondent

Vs.

Babu Karuppusamy

... Respondent / Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1984, praying to set aside the Judgment and Decree dated August 31, 2016 made in H.M.O.P.No.235 of 2012 on the file of the Principal Family Court, Coimbatore.

For Appellant : M/s.N.Manokaran

For Respondent : Mr.Arun Anbumani
for Mr.M.Guruprasad



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J U D G M E N T

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*(Judgment of the Court was delivered by **J. NISHA BANU, J**)*

This Civil Miscellaneous Appeal has been filed by the appellant / wife against the Judgment and Decree dated 31.08.2016 made in H.M.O.P.No.235 of 2012 passed by the 'Principal Family Court, Coimbatore' ['Family Court' for short], in which, the petition filed by the respondent / husband seeking divorce was allowed and divorce was granted on the ground of cruelty.

2. For the sake of convenience, the parties will hereinafter be referred to as per their array in the Hindu Marriage Original Petition.

3. CASE OF THE PETITIONER / HUSBAND

(i) The case of the husband before the Family Court is that the marriage between the petitioner/husband and the respondent/wife was solemnized on 10.06.2005 as per Hindu Rites and Customs. The respondent was presented with 45 sovereigns of gold by her parents out of their own wish and all the jewels are with the respondent and no demand whatsoever was made on the side of the petitioner/husband before or after marriage. The expenses of the marriage were shared equally.



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(ii)After marriage they lived in India for six months and thereafter, they relocated to the USA. Owing to the project-based employment of the petitioner, the respondent initially stayed with her brother before they together moved into a separate house at Nashville City in September 2006. Then, on the compulsion of the respondent, a separate house was seen at Michigan during December 2006 and consequently, the earlier house lease was closed by paying USD 6,000/- which was an utter loss.

(iii)Meanwhile, their first child was born. They had planned to postpone second child and accordingly, a Copper-T was used. However, the respondent removed the same without the consent of the petitioner. For the second child's delivery, for economical as well as practical reasons, the respondent was to return to Udumalpet. Despite booking a flight in May 2009, the respondent refused, causing a loss of Rs.1,92,000/- . Another ticket for Rs. 2,00,000/- was later booked. On 13.06.2009, when they reached Madras Airport, to the shock of the petitioner, the parents of the respondent came to the Airport and took the respondent along with the child to Coimbatore and their tickets by flight to Udulmalpet was a loss to the petitioner.



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(iv) On 17.06.2009, the respondent made a false complaint of demand of dowry and the petitioner was arrested by Thudiyalur Police and he was in jail for 25 days and the case was taken on file in C.C.No.336/2009 on the file of the Judicial Magistrate No.1, Coimbatore.

(v) The respondent had filed maintenance petition in M.C.No.14/2010 in which she had filed C.M.P.No.446/2011 for interim maintenance. When the petitioner was about to get a permanent job at World Bank, the respondent sent an e-mail on 02.07.2009 labelling the petitioner a cheat and the job of the petitioner was terminated. The respondent prevented the petitioner from earning, on the other hand, she prayed for maintenance of Rs.45,000/- per month and that amounts to cruelty. The acts of the respondent caused monetary loss to the petitioner as he could not get back all the household articles, which were stored in a public storage, for which, he is paying huge tax. Further, the respondent had failed to intimate the birth of the second child.

(vi) To repay the debts, the petitioner was constrained to obtain a low-paying employment at New Delhi. The respondent always doubted the petitioner's character and used to send e-mails to his colleagues and employers with false allegations by misusing his password



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causing cruelty to him. Further, the petitioner was directed by the New Delhi Office to attend a project at Australia. On the complaint given by the respondent, his Australian Visa was cancelled.

(vii) After litigation, there was conciliation between the respondent and the petitioner, and the respondent had agreed to return to the matrimonial home at Udumalpet but she failed to do so. The respondent has voluntarily deserted the petitioner without reasonable cause right from 13.06.2009. All the above acts of the respondent amount to cruelty. Hence, he prayed for divorce.

4. CASE OF THE RESPONDENT / WIFE

(i) The respondent/wife filed counter denying the averments made in the divorce petition by the petitioner/husband. She stated that at the time of marriage, the respondent was given 45 sovereigns of jewels and the petitioner was given 10 sovereigns as well as Rs.2,00,000/- apart from spending Rs.80,000/- for house hold utensils *etc.*, all as insisted by the petitioner and his parents. After that, the petitioner's parents gave 5 sovereigns of gold at the time of first child's birth and another 5 sovereigns on occasions like Diwali and Baby Shower. The petitioner had requested the respondent to handover all the jewels to his mother and



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accordingly, she had handed over the same. The petitioner works in various places in the USA and the respondent gave birth to the first child in the USA. While they were living at Nashville, the respondent came to know that the petitioner had a relationship outside of marriage with one XX [name masked for the sake of privacy], who worked with him at Udumalpet and the respondent questioned the same. The petitioner's mother and sister though initially objected, later supported him.

(ii) When the respondent and her child came to the petitioner's sister's marriage in 2007, the petitioner and his mother demanded Rs.10 lakhs as dowry and caused cruelty to her. Only on the consent of the petitioner, she removed copper T and the doctor's fee was paid only through the petitioner's bank account as she was the dependent of the petitioner. As the respondent's health was weak, she was asked to take bed rest and the petitioner forced her to come to India and before that, demanded Rs.10 lakhs by stating that only if the money was paid, he will take her back and even if it is so she should not question about his relationship with the said person. The petitioner informed to the respondent's parents to come to Chennai Airport and demanded Rs.10 lakhs and left the respondent and her child in the Airport itself. After two



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days, the petitioner and his mother came to the respondent's house and demanded the said amount and as such, she was constrained to lodge a complaint against the petitioner. She gave birth to second child on 07.09.2009 and even after intimation, the petitioner failed to visit the child. Accordingly, she prayed to dismiss the petition.

FAMILY COURT

5. Before the Family Court, the petitioner/husband examined himself as P.W.1, the father of the petitioner was examined as P.W.2 and Ex-P.1 to Ex-P.19 were marked; and the respondent/wife examined herself as R.W.1 and marked Ex-R.1 to Ex-R.15.

6. The Family Court, after considering both oral and documentary evidence, concluded that the petitioner / husband is entitled to get a Decree of divorce on the grounds of cruelty. The Family Court found that the respondent / wife had committed cruelty by filing a false dowry complaint against the petitioner, attempting to cancel his passport, sending an email to his employer calling him a cheat which led to his job being terminated, attempting to cancel his visa *etc.*



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7. Challenging the same, the present Civil Miscellaneous

Appeal has been filed by the appellant / respondent who is the wife.

ARGUMENTS

8. The learned Counsel for the appellant / respondent / Wife would state that the respondent is always ready and willing for reunion. He would further state that the criminal complaint given against the respondent cannot be a ground for cruelty since the respondent had underwent torture at the hands of the petitioner at the relevant point of time and that the petitioner has not pointed out any specific incident or events to prove the allegation of cruelty on the part of the respondent and the respondent was in no way responsible for the termination of the employment of the petitioner. He would further state that he received instructions from the respondent stating that now, the respondent and the petitioner are well in terms and she has also sent family pictures taken during the vacation in May 2024. Therefore, the Order passed by the Family Court has to be set aside. Accordingly, he prayed to allow this Civil Miscellaneous Appeal and set aside the Order of the Family Court.

9. Per contra, the learned Counsel for the respondent /



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petitioner would state that from the year 2009, the petitioner and the respondent are living separately. The respondent is living in India while the petitioner along with the two children are living in the USA and the children are doing their education in the USA. The petitioner is taking care of them. He would further state the respondent had given a false complaint against the petitioner and his mother and the petitioner was in jail for 25 days and subsequently, he was acquitted. Challenging the acquittal Order, the respondent also filed revision case and the same was dismissed. He would further state that whenever the respondent visits her brother's house in the USA, she used to visit the children and take photographs with them in the USA. During May 2024, she came to the USA and had taken photographs and that does not mean that they are living together. For the past 15 years, they are living separately. He would further state that the respondent used to send emails to the petitioner's employer and made him lose his job. When he was employed in the USA, she sent email to the employer and he was terminated from service. Even when he went to Australia, she sent email to the employer and his visa was cancelled and he was sent back to India. The respondent tortured petitioner in one way or the other. The Family Court, considering all the facts and circumstances, has granted the Decree of divorce on the ground of cruelty.



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There is no possibility of reunion. Therefore, he would pray to dismiss the Appeal.

DISCUSSION:

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

11. The marriage between the petitioner and the respondent took place on 10.06.2005 as per Hindu rites and customs. The petitioner hails from Udumalpet and the respondent hails from Coimbatore. Out of their wedlock, a son and a daughter were born to them.

12. It is seen from the records that the respondent had filed a criminal complaint and a case was registered in Crime No.28/2009 and the charge sheet was laid in CC.No.336/2009 for the offence under Sections 498A, 406, 506(ii) and Section 3 & 4 of the Dowry Prohibition Act, 1961 against the petitioner and his mother, and consequently, the petitioner remained in jail for 25 days and after trial, both were acquitted of the charges levelled against them. Against the Order of acquittal, the



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respondent has filed a criminal revision case and the same was also dismissed. Filing false complaints against spouse amounts to cruelty. It has to be noted that the respondent has followed up with the criminal proceedings even after acquittal with an intent to harass the petitioner.

13. In the present case, the petitioner had marked Ex-P.9 - Email sent by the respondent to the World Bank containing false allegations against the petitioner, leading to his termination of employment at the World Bank. If really the respondent wanted to live peacefully with petitioner, she would not have raised such allegations against the petitioner which costed him his job opportunity at the World Bank. Further, the respondent deprived the petitioner of his opportunity to work in Australia by sending e-mails to the passport authority leading to cancellation of his Australian Visa. The petitioner has marked Ex-P.12 – Notification of Visa Cancellation Order, followed by Ex-P.13 - Australian Court's summon for the alleged offence under the Migration Act (Alleged offence of Illegal Immigration with no valid Visa). To be noted, in Ex-P.12, it has been specifically mentioned that the petitioner's visa is cancelled upon the petition sent by the respondent. It is easily discernible from Ex-P.12 and Ex-P.13 that the intention of the respondent was to



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harass the petitioner as there was no purpose for her to prefer petition to the Department of Immigration and Citizenship, Australia, other than causing trouble to the petitioner. Her acts in no manner reflect the best interests of the family nor shows any intention on her part for living peacefully with the petitioner.

14. The act of the respondent in filing a false case of dowry leading to the petitioner spending 25 days in police custody, preferring a complaint for cancellation of visa which gave raise to Court action against the petitioner, terminating the petitioner's job at World Bank, and cancelling his Australian Visa amounts to cruelty. There is no satisfactory evidence available on record to show that the petitioner caused cruelty to the respondent. The respondent tortured the petitioner in one way or the other. The attitude of the respondent would go to show that she wanted the petitioner to be punished. The respondent, being the wife of the petitioner had shattered the future life of the petitioner. The misbehaviour of the respondent shows that she had intentionally done so to defame the petitioner. Therefore, the act of the respondent amounts to cruelty. Thus, this Court finds that the Family Court has rightly granted a Decree of divorce on the ground of cruelty. This Courts find no infirmity or illegality



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in the said findings rendered by the Family Court.

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CONCLUSION

15. In the result, this Civil Miscellaneous Appeal is dismissed confirming the judgment and decree dated 31.08.2016 made in H.M.O.P.No.235 of 2012 on the file of the Principal Family Court, Coimbatore. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

(J.N.B., J.) (R.S.V., J.)

09.12.2024

asi / tk

J. NISHA BANU, J.
and
R. SAKTHIVEL, J.

asi / tk

To

The Principal Family Court,
Coimbatore.



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