



C.M.A.No.2708 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	:	19.06.2024
PRONOUNCED ON	:	16.07.2024

CORAM:
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.No.2708 of 2016

Raja ... Petitioner/Appellant

Vs.

Gowri ... Respondent/ Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, praying to set aside the Judgment and Decree dated 26.10.2016 made in F.C.H.M.O.P. No.100 of 2016 on the file of the Family Court, Dharmapuri.

For Appellant : Mr. C.Munusamy

For Respondent : Mr. N.Ramesh

J U D G M E N T

(Order of the Court made by **P.DHANABAL, J.,**)

Against the dismissal of the petition filed by the appellant herein for dissolution of marriage in F.C.H.M.O.P.No.100 of 2016 on the file of



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Family Court, Dharmapuri, the aggrieved husband has preferred the present Civil Miscellaneous Appeal before this Court.

2. Brief facts that are required for the disposal of this Appeal are as follows:-

2.1. The marriage between the appellant/ husband and respondent/wife was solemnised on 04.06.1998. After their marriage, the appellant being employed at Border Security Force, left for his job to Punjab. Out of the wedlock, the respondent gave birth to a child on 22.01.1999. It is averred in the affidavit that the respondent became indifferent and left the child with the parents of the appellant, thereby leading a wayward life.

2.2. Meanwhile, the appellant and the respondent shifted their place of residence to Punjab, wherein the respondent had begotten her second child. Even during her stay at Punjab, she developed an illicit intimacy with one Perumal. Thereafter, the appellant was transferred to Kashmir, as a result of which, he left the respondent with his parents.



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2.3. During the appellant's visit to his native place, it is stated that the respondent became adamant and declined to perform her conjugal duties.

The respondent never changed her attitude even after the birth of the 3rd child. Thereafter, the appellant took the respondent alongwith him to Pokran, Rajasthan and there also, the respondent developed illicit intimacy with one Vivekanandhan. The respondent often insisted the appellant for divorce and upon the intervention of elders, a Muchlicka had been executed and they filed mutual consent petition for divorce before the Sub Court, Dharmapuri. Listening to the advice given by the brother of the respondent, with a motive to grab money from the appellant, the respondent lodged false complaints against the appellant and his parents before All Women Police Station, Dharmapuri, after which the respondent has been living separately for the past 5 years.

3. According to the learned counsel for the appellant, the respondent/ wife has been torturing the appellant and there is no scope for reunion. Therefore, the appellant filed a petition for dissolution of marriage under Section 13(1)(i-a)(i-b) of Hind marriage Act, 1955 on the ground of cruelty



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and desertion. In the meanwhile, the respondent/wife executed a divorce deed on 17.06.2007 and left her matrimonial home and for the past 8 years, both the appellant and respondent are living separately.

4. Before the Trial Court, on the side of the appellant, 3 witnesses were examined as P.W.1 to P.W.3 and exhibits Ex.P.1 to Ex.P.5. were marked. On the side of the respondent, three witnesses were examined as R.W.1 to R.W.3 and no exhibits were marked. The Trial Court after hearing both sides, dismissed the petition. Aggrieved by the said order, the appellant has preferred the present appeal before this Court.

5. Per contra, Mr. N.Ramesh, learned counsel for the respondent submitted that the petition filed by the appellant before the court below is not maintainable either in law or on facts and the same is liable to be dismissed. The facts cited above were not disputed by the respondent. The allegations that the respondent had illicit intimacy with one Perumal and Vivekanandhan are all denied as false. The averments that the respondent consented for mutual divorce and due to the intervention of her brother, the petition was not proceeded further are all denied as false.



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6. The learned counsel for the respondent further submitted that both the appellant and the respondent are close relatives. After the marriage, the appellant went to attend his official chores at Punjab and the respondent was residing along with the parents of the appellant. After the birth of three children, when the appellant and the respondent were living at Rajasthan, the appellant had an illicit intimacy with one Kavitha. When the same was questioned by the respondent, there arose a misunderstanding between the appellant and the respondent.

7. Furthermore, it was the appellant who harassed the respondent and assaulted her, thereby causing cruelty. Thereafter, when the appellant was transferred to Kashmir, the same was not informed to the respondent. Even when the father of the respondent died, the appellant did not permit the respondent to attend her father's last rites and permitted to go to her parents' home only after a period of 3 months. Thereafter, the parents of the appellant harassed the respondent and drove her out of the matrimonial home on 07.06.2007, after which, she gave a complaint before All Women Police Station, Dharmapuri. The Police officials, after enquiry, had warned



the appellant. The learned counsel would further contend that the appellant also had an illicit intimacy with one Rukmani and with a motive to live with her, he filed a petition against the respondent with false allegations.

8. The learned counsel for the respondent would further submit that the appellant, along with his parents, frequently obtained signatures in blank papers and stamp papers from the respondent. The appellant did not even permit the children to see the respondent and he tortured the children also. The alleged divorce deed dated 17.06.2007 is created only for the purpose of this petition and the same is a forged one. The Trial Court, after carefully considering the above, has passed a well reasoned order and therefore, the same needs no interference of this Court and accordingly, the learned counsel prayed for dismissing the appeal.

9. In reply to the allegations arrayed by the learned counsel for the respondent, the learned counsel for the appellant would submit that the Trial Court failed to consider that as early as on 09.07.2007, the respondent has agreed for mutual divorce and thereby filed an application under Section 13



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(B) of the Hindu Marriage Act before the Subordinate Court, Dharmapuri.

The Trial Court also failed to consider that the appellant was ready and willing to cohabit with the respondent. But the respondent did not come forward for living together. According to the learned counsel for the appellant, the respondent/ wife had levelled false allegations as against the appellant/husband that he had illicit intimacy with other ladies and this has caused mental cruelty to the appellant.

10. He also brought to the attention of this Court that the respondent was residing separately without any valid reason for more than 8 years and she very often cheated the appellant by leading an adultery life. Therefore, the appellant suffered mental cruelty, as a result of which, he filed a petition on the ground of cruelty as well as desertion, which was not considered by the Trial Court. Hence, the learned counsel prayed for setting aside the order passed by the Court below and allow the appeal.

11. This Court heard both sides and perused the records available on record.



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12. The points for determination in this appeal are as follows:-

(1) Whether the appellant has proved the ground of cruelty as well as desertion?

(2) Whether the appellant is entitled to divorce on the ground of cruelty and divorce?

13. For Point Nos. 1 and 2:- The appellant has filed the petition before the Trial Court seeking divorce on the ground of cruelty as well as desertion. In this case, there is no dispute in respect of the relationship of the parties and their marriage, which took place on 04.06.1998. It is an admitted fact that after their marriage, 3 children were born out of the wedlock and now they are under the custody of the appellant. As per the evidence of P.W.1, the respondent had illicit intimacy with one Perumal and Vivekanandhan, but in order to prove the same, there is no sufficient evidence adduced by the appellant. But the available evidence shows that the respondent very often left the matrimonial home and was staying with her parents without any valid reasons.



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14. Besides, the factum was also admitted by the respondent and the respondent also made allegations as against the petitioner that he had illicit intimacy with other ladies. The respondent has not filed any application before the court of law either for restitution of conjugal rights or for divorce. The respondent nowhere has stated in the counter that she is ready to live with the appellant. Therefore, the attitude of the respondent shows that she is not ready to live with the appellant. Both the appellant as well as the respondent are making allegations against each other that they had illicit intimacy with others, but the same has not been proved by either of the parties. Making allegations of adultery may cause mental cruelty to the parties.

15. From the records it is seen that already the petition was filed before the Sub Court for mutual divorce and the same was not proceeded further. The appellant has categorically stated that the respondent left the matrimonial home and are in long separation from 17.06.2007. The same was also admitted by the respondent. Therefore, the appellant has made out the case on the ground of cruelty as well as desertion. Therefore, this Court



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is of the opinion that the appellant has made out the case for divorce on the ground of cruelty as well as desertion. Point Nos.1 & 2 answered accordingly.

16. Upon considering the above aspects, this Court would infer that the Court below, without discussing the evidence adduced by the appellant has discussed only about the evidence submitted by the respondent and has wrongly come to a conclusion that the appellant had illicit intimacy with other ladies. The Trial Court also failed to consider that already the respondent gave a criminal complaint before the police station and the same was also admitted by the respondent. Therefore, giving criminal complaint and making allegation of adultery with another woman has resulted in mental cruelty to the appellant. The said aspects have not been considered by the Trial Court and the Trial Court erroneously dismissed the petition. Therefore, the order passed by the Trial Court is unsustainable and liable to be set aside.

17. At this juncture, it is relevant to refer the judgment of the Hon'ble Supreme Court of India in *Shri Rakesh Raman -vs- Smt. Kavita*, reported



in **AIR 2023 SC 2144**, wherein the Hon'ble Supreme Court of India in para no. 18 has held as follows:-

“We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under [Section 13\(1\) \(ia\)](#) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a ‘marriage’ would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.”



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18. It is clear that the long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and existing bitterness between the two has to be read as cruelty under Section 13(1) (i-a) of the Hindu Marriage Act, 1955. In the case on hand also, the parties are separated for a long time and there was no cohabitation between them and complete breakdown of all meaningful bonds, which comes under the cruelty. On that ground also, the petitioner is entitled to get divorce.

19. In the result, this Civil Miscellaneous Appeal stands Allowed and the order passed by the Trial Court in F.C.H.M.O.P.No.100 of 2016 dated 26.10.2016 is set aside and the petition is allowed. The marriage between the petitioner and the respondent dated 04.06.1998 is dissolved by granting divorce. No costs.

(J.N.B., J.) (P.D.B., J)
16.07.2023

Index : Yes/No
Speaking Order : Yes/No
NCC : Yes/No



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To:

The Family Court,
Dharmapuri.



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

sts

Order made in
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