



C.M.A.Nos.1370 of 2018 & 2218 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.09.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.Nos.1370 of 2018 & 2218 of 2019

Magueche

...Appellant in both appeals

vs.

Ramala

...Respondent in both appeals

PRAYER: Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984, against the judgment and decree dated 10.05.2018 made in M.O.P..No.432 of 2011 and M.O.P..No.120 of 2013, respectively, on the file of the Family Court, Puducherry.

For Appellant in both appeals : Mr.R.Thiagarajan

For Respondent in both appeals : Mr.S.N.Subramani

COMMON JUDGMENT

(Judgment was made by Mrs.R.Kalaimathi, J.)

C.M.A.No.1370 of 2018 (M.O.P.No.432 of 2011) and



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C.M.A.No.2218 of 2019 (M.O.P.No.120 of 2013) have been preferred by the husband.

(i) M.O.P.No.432 of 2011 was filed by the husband under Section 13(1)(i-a) of the Hindu Marriage Act, 1955, praying to dissolve the marriage solemnized between the petitioner and respondent on 04.11.2010 at Dhavamani Thirumana Nilayam, Kalapet, Puducherry on the ground of cruelty.

(ii) M.O.P.No.120 of 2013 was filed by the wife under Section 9 of the Hindu Marriage Act, 1955 r/w Section 7(1)(d) of the Family Court Act, 1984, for restitution of conjugal rights by directing the respondent/husband to live with the petitioner/wife.

2. For the sake of convenience, the parties are referred to as per the litigative status in M.O.P.No.432 of 2011.

3. The case, set out in petition in M.O.P.No.432 of 2011 and the details of the counter in M.O.P.No.120 of 2013, are stated in brief:

(a)The marriage between the petitioner and respondent was



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solemnized on 04.11.2010 at Dhavamani Thirumana Nilayam, Kalapet, Puducherry as per the Hindu customs and rites. The marriage was registered before the marriage registrar, Puducherry on 26.11.2010. After the marriage, family was set up at the petitioner/husband's residence in Puducherry. Since the date of marriage, the respondent/wife never behaved as a dutiful wife and did not discharge her matrimonial duties. She wanted the petitioner/husband to settle at her parents house. When the petitioner/husband did not accept for the same, the respondent/wife scolded him in filthy language. She never gave respect to the petitioner and his parents. She used to awake from bed daily by 10.00 a.m. and the respondent/wife would state that she was brought up in such a manner as she is the only daughter of her parents.

(b) Despite the respondent/wife's rude behavior, the petitioner/husband showed all love and affection, but, it turned to be futile. In fact, on many occasions, the respondent/wife went to her parents house without the petitioner/husband's knowledge and consent and in the absence of the



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petitioner/husband. When she was aware that he is a driver, she used to go to her parents house without informing to his parents. When the petitioner/husband questioned the attitude of the respondent/wife, she shouted at the petitioner/husband as well as his parents. The petitioner/husband tolerated all her unbecoming behavior, hoping that she would mend her ways. But, the respondent/wife's rude behavior caused mental agony, when the petitioner/husband was away due to his work during the first week of April 2011, the respondent/wife went to her parents' residence without informing the petitioner/husband and thereafter, she did not come back.

(c) Though the petitioner/husband tried to meet the respondent, she never permitted him. The respondent/wife did not inform to the petitioner/husband about birth of the child. The petitioner/husband did not see the child because of the adamant character of the respondent/wife. In all ways, the petitioner/husband was subjected to cruelty by the respondent/wife. Despite the advice given by the elders of the family, she did not follow those advices. The adamant attitude



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of the respondent/wife has made him to suffer and he was forced to file the petition for dissolution of marriage with the respondent/wife. He issued a legal notice on 15.11.2011 to the respondent/wife called upon her to give consent for dissolving the marriage. Though she received the notice on 19.11.2011, she did not give any reply.

4. The details of the counter in M.O.P.No.432 of 2011 and the details of the petition in M.O.P.No.120 of 2013, have been given in brief:

(a) The allegations made in the petition all are denied except the marriage. The respondent/wife has completed 12th standard and the petitioner/husband has completed 10th standard. But, the father of the petitioner/husband printed in the marriage invitation as if the petitioner/husband and the respondent/wife have completed M.A., and B.A., respectively. When the respondent's father questioned the petitioner's father about the same, he replied that in order to boost up the image of his family in the society, he did the same. Further, as regards the



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occupation of the petitioner/husband, the petitioner's father told before marriage that the petitioner/husband was running a travels and doing real estate business. On believing the same, the parents of the respondent/wife agreed for the marriage. But, the petitioner/husband was neither running travels nor doing any real estate business and he did not work at all.

(b) On the 15th day from the marriage, the petitioner/husband came to the matrimonial home under intoxication. Though the respondent/wife requested him to take food, he refused to take food. When the respondent/wife questioned her husband as to why he consumed alcohol, for which he scolded the respondent and her mother in filthy language and this caused her mental agony. Because of the same, she had chest pain and requested him to take her to the hospital. As he refused to take her to the hospital. On information, her brother came and took her to the hospital.

(c) On the next day, that is, 19.11.2010, in the morning, the respondent/wife informed the same to the petitioner's mother and told her to advice him not to consume alcohol. But, the



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mother of the petitioner/husband took it casually and rather, warned the respondent/wife that she should not question the same. The petitioner's mother told her son to pour kerosine on the respondent/wife and to set fire on her, thereby, they threatened the respondent/wife. Thereafter, the petitioner/husband and his mother demanded to bring 50 sovereigns of jewels and also to get immovable property in the name of the petitioner from her parents. She tolerated all the ill-treatments in order to maintain harmony in the family. She hoped that the petitioner and his mother would change their attitude.

(d) On 26.12.2010, her parents came to the petitioner's house and as requested by them for pongal, the respondent/wife was sent with her parents. The petitioner/husband never visited the respondent/wife at her parents' house and when the respondent/wife contacted him through mobile phone, he scolded her in filthy language and then, changed his mobile number in order to avoid phone contact with the respondent/wife.



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(e) On 31.01.2011, as she was not well, she went to the hospital and the doctor informed that she was pregnant. When the respondent/wife informed the same to the petitioner/husband, he scolded that her pregnancy is not a happy news to him. When the respondent/wife requested the petitioner/husband to take back her to his house, he refused. When the petitioner had come to his her parents' house on 21.05.2011 to take back his DVD, despite the request of the respondent/wife to take her to his residence, he told that he would take her after getting employment.

(f) On 06.06.2011, the petitioner/husband brought the dresses of the respondent/wife and left them in the varandha of her parents house. Before the respondent/wife came from inside the house, he went off in the car. On 12.06.2011, the petitioner's father, his brother and two others had come to the respondent's parents' residence and at their request, the respondent/wife was sent along with them to the house of the petitioner/husband. When they reached the residence of the petitioner/husband, his mother stopped them at the gate and



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asked the respondent/wife as to why she came there and scolded in filthy language.

(g) On the next day morning, the petitioner/husband beat the respondent/wife and pushed her out from the matrimonial home and threatened her not to enter into his house. She informed the same to the petitioner's father and the petitioner's father advised her son. The petitioner/husband asked the respondent/wife to arrange for a panchayat, due to which the respondent's father, uncle Thiruvankadam and his brother Mohan and other relatives Ponnusamy, Ganasoundari came to the petitioner's house and after mediation, they advised the petitioner/husband to treat the respondent/wife with love and affection. Thereafter, when she washed the clothes of the petitioner/husband, he scolded her in abusive language and beat her by asking her as to why she washed his clothes. After that, the petitioner/husband went out of his residence and did not return back to home till July 2011. During the absence of the petitioner/husband, the respondent/wife was not provided with proper food and was not allowed to cook food too.



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(h)The petitioner's father wanted to conduct Baby shower function for the respondent/wife, but, the petitioner's mother did not agree with the same and without baby shower function, the respondent/wife was sent to her parents house for delivery and she gave birth to a female child on 28.08.2011 at the Government Maternity Hospital, Puducherry. The petitioner/husband did not see the respondent/wife and their child. The respondent/wife attempted to inform the birth of the child to the petitioner/husband through phone, but, he did not attend her phone call and hence, she informed the same to the petitioner's father. Nobody came to see the child. The petitioner/husband caused to issue a legal notice dated 15.11.2011 with false and vexatious allegations for divorce. Even though the petitioner/husband and his mother scolded her, the respondent/wife wanted to live with the petitioner/husband in order to maintain the reputation of both the families and she filed the petition for restitution of conjugal rights in M.O.P.No.120 of 2013.



5. Common evidence was recorded in both the petitions and

common judgment came to be passed.

6. At trial, on the respondent/wife side, the wife has examined herself as P.W.1 and yet another witness has been examined as P.W.2 and 21 documents have been marked. On the petitioner/husband side, the husband has examined himself as R.W.1 and 5 documents have been marked.

7. The petitioner/husband filed the petition for divorce on the ground of cruelty. Upon consideration, the Family Court, after taking into consideration both sides oral and documentary evidence and after elaborate discussions, has concluded that the husband has failed to prove cruelty and further, the wife was deserted by the husband and thereby, the petition filed by the husband for divorce was dismissed and the petition filed by the wife for restitution of conjugal rights was ordered in her favour. Aggrieved by the same, the husband has come with this appeal against the orders passed in both original petitions.



WEB COPY 8. Heard the arguments made by the learned counsels on both sides and perused the materials on record.

9. The factum of marriage is admitted and it is an arranged marriage. The husband has filed his proof affidavit in line with contents of the petition in M.O.P.No.432 of 2011. The commissions and omissions mentioned by the husband are given hereunder:

- (i) Since the date of marriage, the respondent/wife never behaved like a dutiful wife and did not discharge her matrimonial duties.
- (ii) The respondent/wife persisted the petitioner/husband to settle at her parents' house and when he did not accept for the same, she scolded him in filthy language.
- (iii) The respondent/wife never gave respect either to the petitioner/husband or his parents.
- (iv) The respondent/wife used to awake daily by 10.00 a.m. in the morning. When the petitioner/husband asked about the same, the respondent/wife gave a reply that she was



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brought up in such a manner by her parents as she is the only daughter for her parents.

(v)The respondent/wife went to her parents residence without the petitioner's knowledge and consent.

(vi)When the petitioner/husband was out of station during the first week of April 2011, the respondent/wife went to her parents house without informing the petitioner and thereafter, she did not come back to matrimonial home.

(vii)The respondent/wife did not inform the petitioner/husband about the birth of the child.

(viii)The petitioner/husband did not see the child because of the adamant character of the respondent/wife.

(ix)Thereby, he was subjected to cruelty and despite the advice given by the well-wishers and elders of the family, she did not mend her ways.

10. On the other hand, the wife has narrated by way of reply as follows:

(a)As regards the occupation of the petitioner/husband, the



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petitioner's father told before marriage that the petitioner/husband was running a travels and doing real estate business, but, after marriage the respondent/wife came to know about that the petitioner/husband was not in any work.

(b) Though the petitioner/husband came to home under intoxication, her mother-in-law did not questioned the same, rather scolded the respondent/wife.

(c) Her mother-in-law told the petitioner/husband to pour kerosine on the respondent/wife.

(d) When she informed about her pregnancy, the petitioner/husband told that he was not happy about the same.

(e) When she washed his clothes, the petitioner/husband scolded her in filthy language.

(f) During the absence of the petitioner/husband, the respondent/wife was not provided with proper food and was not allowed to cook food too.

(g) They did not conduct baby shower function for the respondent.

(h) After the birth of baby, when she tried to contact the petitioner/husband, he did not attend the phone call.



(i) After informing the birth of the child to the petitioner's father, he did not come to see the child.

(j) Even though the petitioner/husband and his mother scolded her, the respondent/wife wanted to live with the petitioner/husband in order to maintain the reputation of both the families.

11. Mantra for successful marriage life is to show mutual respect and mutual affection on each other. Though both are brought up in a different culture, custom, on one fine morning, they started to live together. In such a situation, it is common that even in petty matters, difference would crop up. To strengthen the marital relationship, it is the responsibility for both the husband and wife to respect each other and both should have mutual respect and mutual understanding besides mutual affection.

12. In the matrimonial cases, burden of proof lies on the petitioner. As regards the degree of probability, it is not beyond reasonable doubt, but, based on preponderance of probabilities.



WEB COPY 13. As regards the word 'Cruelty', the Court has got a wider spectrum for consideration so as to apply it contextually. It depends upon the educational, social and financial background of spouse, culture, conduct of husband and wife, physical and mental weakness of the spouse, etc. The reasons are enumerative and exhaustive. It differs in each household and each person. Even deliberate and willful intention may not matter at times.

14. With the passage of time, due to the impact of, especially electronic media, the concept of cruelty is bound to change from time to time. There cannot be any fixed parameters for determining the issue of cruelty in matrimonial matters. Therefore, it is prudent to adjudicate on a case to case basis, by evaluating in a given situation. Acts of cruelty would differ from person to person and man to a woman and a broader approach is the need of the hour in matrimonial matters. In the modern era, issues have to be dealt with some latitudinarianism.



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15. It is relevant to refer to the observations made by the Hon'ble Supreme Court in ***Sirajmohmedkhan Janmohamadkhan vs Hafizunnisa Yasinkhan & Another reported in 1981 (4) SCC 250***. It has been held as follows:

“The learned Judge has put his finger on the correct aspect and object of mental cruelty. The fact that this case did not arise out of the proceedings under Section 125 makes no difference because we have already observed that the concept of cruelty remains the same whether it is a civil case or a criminal case or a case under any other similar Act. The general principles governing acts constituting cruelty-legal or mental ill-treatment or indifference cannot vary from case to case though the facts may be different.”

16. In our view, cruelty means act which causes a reasonable apprehension in the mind of the other spouse to the effect that it would be harmful or injurious for the other party to live with him or her. The acts of cruelty have to be distinct from ordinary wear and tear. On the basis of sensitivity of the petitioner, it cannot be



decided. In case of mental cruelty, it has to be inferred from the facts and circumstances of the case. It would not be a correct approach if an instance of behavior is taken in isolation.

17. An useful reference may be made to the observations of the Hon'ble Apex Court in ***Samar Ghose vs. Jaya Ghose reported in 2007 (4) SCC 511*** as follows:

“101. (x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.”

18. In the case of ***Roopa Soni Vs. Kamalnarayan Soni reported in 2023 SCC Online SC 1127*** has observed that “...the court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a



method of free decision — libre recherché scientifique i.e. “free scientific research”...”.

19. The concept of cruelty has undergone so much of changes, according to the advancement of social concepts and standard of living, cruelty may be mental or physical, sometimes intentional or even unintentional. In the case of mental and unintentional category, the issue raises difficulties. In case of physical cruelty, there may not be much problem in determining the issues. What is cruelty for one person may not amount to cruelty for another person.

20. On the side of the respondent/wife, her uncle has examined as P.W.2. Whereas, the husband has not examined any witness. When suggestions, which are made to P.W.1 and R.W.1 regarding the commissions and omissions as averred in the petition and counter respectively, they have denied the same.

21. From the both sides evidence, it is inferable that the petitioner/husband has completed his 10th standard and the



respondent/wife has completed her 12th standard. The petitioner/husband is a driver by profession. But, the respondent/wife would contend that before the marriage, it was informed to them that he was running a travels and doing real estate business. But, in fact, after marriage, he was not in a particular job. Of course, the commissions and omissions averred by the petitioner/husband cannot be taken as a serious misconduct. On the other hand, the respondent/wife has put forth so many acts of cruelty and it appears that when she went to her parents residence, she became pregnant and at that time, they were under misunderstanding, as the unemployment of petitioner has widen in its width and breath. Of course, it is the duty of the wife to inform the husband about her pregnancy and at the same time, it is the duty of the husband to come and see her and to take steps to sort out the differences and should have taken her to his residence. But, nothing had happened and both petitioner and respondent mutually put the blame on each other. Thereafter, somehow she was brought to the matrimonial home. She was taken to her parents house for delivery and thereafter also, because of the misunderstanding, the



petitioner/husband stated that he was not informed about the delivery. However, the respondent/wife, on the other hand, stated that though she rang up to him, he did not pick up the phone. Thereafter, she has been living with her parents since 2011.

22. To that effect the husband filed the petition for divorce on the ground of cruelty before the Family Court, Puducherry in M.O.P.No.432 of 2011. The wife filed the petition for restitution of conjugal rights in M.O.P.No.120 of 2013. In view of the above facts and circumstances of this case, The Family Court held that the petitioner/husband failed to prove the ground of cruelty and passed common judgment ordering restitution of conjugal rights in favour of the wife vide order dated 10.05.2018.

23. The respondent/wife has been examined as P.W.1 and she filed proof affidavit in line with the contents of the M.O.P.No.120 of 2013. It is her evidence through cross-examination that before the marriage, it was stated that her husband was doing real estate business along with his father. But, he did not do real estate and at



the time of their marriage, he was running his own taxi. It is her further evidence that on 15th day from the marriage, her husband came under intoxication. Her husband shouted at her and her mother in filthy language and slept off. When she told the same to her mother-in-law on the next day, her mother-in-law told her that the respondent/wife should not mind about her son and she shouted at her and did not advise her son. On the next day, as her husband and mother-in-law both together shouted at her, she developed chest pain. As no one took her to the hospital, on phone call, her younger brother came and took her to the Kalapet Government Hospital. Thereafter, her mother-in-law told to the petitioner/husband to pour kerosine on the respondent/wife (21st day). Her life is not safe at her mother-in-law's residence. She at least wants to live with her husband because of her child.

24. The petitioner/husband has examined himself as R.W.1. The entire allegations raised in her proof affidavit have been invariably denied by R.W.1. From the cross-examination of R.W.1/husband, it is discernible that the wife went to her parents



home on 26.12.2010 and thereafter, she became pregnant and only on 12.06.2011, the father of the husband, his brother and two others went to the wife's house and brought his wife to his residence. It appears that as a customary practice, after baby shower, the wife will be taken to her parents home. But, R.W.1 has stated that she was not sent to her residence by R.W.1. A girl baby was born to her at the Government Hospital on 28.08.2011. To that effect, R.W.1 stated that as she did not inform the birth of the child, he did not know and hence he did not come and see the child. Thereafter, on 15.11.2011, R.W1 has sent legal notice calling for her to give consent for divorce.

25. From a careful perusal of P.W2/Balaurajan, it appears that he is the cousin of P.W1 and he would state that because of the issues cropped up between the petitioner and the respondent, on many occasions, Panchayat talks for settlement were held. Further, he has stated that he did not know about the issues between them.

26. On the other hand, the wife has filed a petition under



Section 9 of the Hindu Marriage Act, 1955 to order for restitution of conjugal rights by stating that when she was pregnant, for delivery she went to her mother's residence and thereafter, a girl baby was born to her and without any reason, the petitioner/husband has withdrawn from the society which is totally unreasonable.

27. The fundamental rule of matrimonial law is that if either spouse has abandoned or withdrawn from the society of the other without reasonable excuse or just cause, the Court should grant a decree for restitution. In support of the petition for restitution of conjugal rights, the wife has filed her proof affidavit (P.W.1) and with regard to the divorce, no details advantageous to the petitioner/husband was elicited from P.W.1/wife.

28. From the cross-examination of R.W.1/husband, it is pellucid that on 26.12.2010, upon the invitation of wife's parents, she alone was sent to her parents residence and the petitioner/husband did not go to his father-in-laws residence. A suggestion was posed to him that her pregnancy was intimated to him, for which, he has



answered in negative. Another suggestion was also posed to him as to the wife wanted to go to her matrimonial home, he only denied for the same and also answered in negative. Thereafter, it is the evidence of R.W.1, during his cross-examination that on 12.06.2011, his father and brother and two other persons went to his wife's residence and brought her to the matrimonial home. Thereafter also, it appears that baby shower function was not held and she was sent to her home, for that R.W.1 has answered that at her instance she went to her parents home. A girl baby was born to her on 28.12.2011 is a admitted fact. When a suggestion was posed to him that the wife rang up to him and he did not attend the phone call of his wife, was also answered in negative. About three months after the date of delivery, R.W.1 has caused to issue legal notice dated 15.11.2011 calling upon her to give consent for divorce. When she was taken to her parents house and when she was pregnant, thereafter, R.W.1/husband did not bring her to the matrimonial home, from the testimony of P.W.1/wife, it is deducible that she was deserted without any reasonable cause. Home is always a pleasant place to live. Obviously, in a broken home, peace and happiness are



withered and the child are the direct sufferers and the impact on them is huge.

29. The learned Family Court Judge has elaborately discussed about both sides evidence and has concluded that for the allegations raised for the petition for divorce, the husband has not proved his case and chose to dismiss his petition for divorce. The commissions and omissions complained could not be categorized as acts of cruelty. All the allegations levelled by the petitioner/husband would come under ordinary wear and tear of matrimonial life and he has utterly failed to make out a strong case. The evidence available on record preponderates in favour of wife. We are also of the firm view that the Family Court Judge was right in concluding the same.

30. As regards the petition for restitution of conjugal rights apart from the evidence of P.W.1/wife, in fact, the cross-examination of R.W.1/husband has strengthened the case of the wife and it was made so clear that she is deserted without any reasonable cause. Even during cross-examination of P.W.1, though she has raised so



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many allegations against her husband, lastly, she has answered during her cross-examination that still she wants to live with her husband. Absolutely, we see no good reason to disturb the findings of the learned Family Court Judge.

31. Based on the aforesaid discussions and observations, these Civil Miscellaneous Appeals are dismissed and the orders passed by the Family Court is confirmed. No costs.

(J.N.B.,J.)

(R.K.M.,J.)

23.09.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
apd

To

1. The Judge, Family Court, Puducherry.
2. The Section Officer,
VR Section,
High Court, Madras



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