



C.M.A.No.1388 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 23.08.2024

Pronounced on : 11.09.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.1388 of 2018

R.Venkataraman

...Appellant

vs.

Rajalakshmi

...Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984 to set aside the decree and judgment on the the file of the Family Court Judge, Villupuram passed in H.M.O.P.No.66 of 2016 dated 02.04.2018 and allow this appeal.

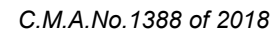
For Appellant : Mr.P.Kavitha Balakrishnan

For Respondent : No Appearance

JUDGMENT

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

This civil miscellaneous appeal has been preferred by the



of 2016 dated 02.04.2018.

petitioner. Aggrieved, the petitioner has preferred this appeal.

nor represented through her counsel.

4. Facts leading to the filing of O.P are set out in brief:

only for 20 days. Even during the said time, she did not give respect to the



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inmates of the house and the relatives of the petitioner. The respondent was stating that she was not interested in matrimonial life, and she felt to die like mentally ill person. She did not heed to the words of his family member. She did not change her attitude. The respondent would not talk to his mother. The respondent had a wordy altercation with his elder sister when she had come for their marriage. Because of the attitude of the respondent, the petitioner's father suffered hyper tension and he underwent heart surgery. He received a legal notice from the respondent dated 02.08.2016 for restitution of conjugal rights with false allegations, as if, the respondent family members gave house articles worth about one lakh and they presented 19 sovereign jewels. It is utter false to state that as the respondent was ready to live with the petitioner and it is the petitioner who is not ready to live with her. Even the marriage was not consummated. In the year 2013, on the last day in the month of Aani, the respondent father came and the respondent went along with her father. Since then, the respondent is living at her father's residence. He sent reply notice on 05.08.2016 to the respondent and thereafter, she lodged a complaint before the Villupuram All Women Police Station. He appeared for enquiry before the said police station on 23.08.2016. Both were given counseling on 31.08.2016. Hence, this petition for divorce was filed. All her family members are supporting her, and he lost his peace since three



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years from the date of marriage. He has been living alone and on the ground cruelty and desertion, he sought for an order of divorce.

5. Per contra, the respondent filed her counter counteracting the details of the petition by stating with one month after the marriage, the petitioner demanded her the remaining 11 sovereign of jewels, and the petitioner's mother and sister were supporting him. But, she was withstanding all the cruelties thinking about the future life. On the first day of Aadi (Tamil month), in the year 2013, the petitioner himself left the respondent at her mother's residence and he sent a message that she has to come with 11 sovereign jewels in the month of Aavani. He was often changing the cell phone number, so that she was not able to contact him, thereby caused mental cruelty to her. The respondent's father and relatives had a talk of settlement with the petitioner, but he did not come forward to live with her. For the notice sent by her for restitution of conjugal rights on 02.08.2016, the petitioner sent reply notice on 05.08.2016 with false allegations. When she went to the petitioner's residence, the petitioner along with his father Ramamoorthy refused to admit her inside the house. Therefore, she lodged a complaint before the Villupuram All Women Police Station for reunion with her husband. He did not accept the advice given by the police on 23.08.2016. Now with false



allegations, he has filed petition for divorce.

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6. Ms.P.Kavitha Balakirshnan, learned counsel appearing for the appellant would vehemently contend that, because of the cruel acts of the respondent, the petitioner lost peace in his life and his father underwent surgery. The respondent lived along with the petitioner only for 20 days and thereafter, for no reasons, the respondent has deserted the petitioner. These details were not taken into consideration by the trial Court and the petition filed by the petitioner/husband was dismissed.

7. At trial, the petitioner/husband has examined himself as P.W.1 and five documents were marked. On the side of respondent, the respondent/wife has examined herself as R.W.1 and five documents were marked.

8. In the matrimonial matters, the burden of proof lies on the petitioner. The petitioner need not to prove the case beyond reasonable doubt, but by preponderance of probability.

9. The factum of marriage is admitted. At the time of marriage, the respondent was working as a lecturer in a private college in the union territory of Pondicherry. No independent witness has been examined on



either side.

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10. Therefore, the instance of cruelty raised by the petitioner are probable or not and whether the said acts amount to cruelty or not is the moot question.

11. 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.

12. 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 broad 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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13. The petitioner has filed his proof affidavit in line with the petition averments. The petitioner has raised allegations against the respondent/wife that she did not give respect to his parents and relatives: She stated that she was not interested in the marital life, and she would talk like a mentally ill person that she wanted to die. She would not properly talk to her mother in law and the respondent would disrespectfully talk to her sister in law. These acts are stated to be acts of cruelty. More so, on the last day of Aani month, in the year 2013, the respondent was taken to her father's residence and she did not return to the matrimonial home for the past three years and in the year 2016, petition for divorce was filed on 06.09.2016. The O.P was filed for an order of divorce on the ground of cruelty and desertion.

14. The respondent would counteract by stating that the petitioner asked for 11 sovereign jewels and he had caused cruelty. It is the petitioner who left the respondent at her parents house on the first day of Aadi month. The petitioner/husband wanted her to bring the remaining 11 sovereigns of jewels. As the petitioner had the habit of change his sim card, she was not in a position to contact the petitioner. When the respondent went to the petitioner's house, she was not permitted. The



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complaint was given before the All Women Police Station for restitution of conjugal rights. Despite the advice given by the police, she was not taken back by the petitioner.

15. It has come on record through the evidence of R.W.1 that both the petitioner and the respondent lived together for about 35 days and thereafter, she was taken to her residence by her father on the last day of Aani in the year 2013. It is one of the Hindu custom that soon after the marriage in the last of Aani month, family members of the wife would go and bring the girl to their home. Based on the said custom, the respondent was brought to her father's residence by her father and mother. It is her evidence that she made arrangements for the jewels in order to live with her husband. When she went to her husbands residence, the petitioner's father did not permit her to talk with the petitioner and she was sent off. No steps were taken by either side from August, 2013. After three years, the respondent issued legal notice for restitution of conjugal rights dated 02.03.2016.

16. As regards the cruelty, it relevant to refer to the observations made by the Hon'ble Apex Court in *V.Bhagat Vs. D. Bhagat reported in (1994) 1 SCC 337*:



“16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

17. In *Naveen Kohli Vs. Neelu Kohli* reported in (2006) 4 SCC 558, the Hon'ble Supreme Court has held that, the respondent wife got an advertisement issued in a national newspaper that, her husband was an employee. She got another news item issued cautioning the business



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associate to avoid dealing with him. This was treated as causing mental cruelty to the husband. The wife filed several complaint and cases against the husband. The Court held that her conduct causing mental cruelty.

18. The appellant/husband has completed his Post Graduate Degree in English. The respondent/wife has completed M.C.A and M.Phil. and she was working as lecturer in private Arts and Science College in the Union Territory of Pondicherry. It is made clear that only for about a month, the respondent lived in the matrimonial home. Therefore, within few weeks, it would not have been possible for the respondent to move freely with the petitioner's family members. The petitioner has not raised specific acts of cruelty against the respondent. After a month from the date of marriage, as a part of the Hindu culture, in the month of Aani, the respondent was taken to her parents home by her parents. Thereafter, she has been residing at her parents residence. The respondent claimed that she came to the petitioner's house and she was prevented from talking to the petitioner by the petitioner's father is not believable. In such a situation, had it been true, she would have been accompanied by some other persons.

19. There is no uniform standards to decide a particular case in a



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particular way. It depends upon the facts and circumstances of each case.

In the month of August 2016, the respondent at the first instance, issued a legal notice for restitution of conjugal rights, to the effect that she is ready to live with him and the petitioner/husband has sent reply notice.

20. Almost for about three years, they were living in separation would show that the respondent lost her interest in the marital life.

21. The next ground putforth is that, without any reason, the respondent/wife has deserted the petitioner/husband. On that ground also marriage took place between the petitioner and the respondent on 10.06.2013 has to be annulled.

22. The expression "desertion" in the matrimonial law means abandonment of one spouse by the other without reasonable cause and without the consent or against the wish of the other. Desertion is withdrawal from a state of things. It includes willful neglect of the petitioning spouse by the respondent. To satisfy the requirement of the rule, it is enough that the abandonment was without a reasonable cause and without consent. The statutory requirement as to the time is not less than two years immediately proceeding the presentation of the petition.



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23. In matrimonial cases, the court has to adopt progressive approach where a liberal approach is permitted.

24. The expression "desertion" is summarised in Halsbury's Laws of England, third edition, volume 12, paras 453-54, which are given hereunder:

"In its essence desertion means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent, and without reasonable cause. It is a total repudiation of the obligations of marriage. In view of the large variety of circumstances and of modes of life involved, the court has discouraged attempts at defining desertion, there being no general principle to all cases.

Desertion is not the withdrawal from a place but from a state of things, for what the law seeks to enforce is the recognition and discharge of the common obligations of the married state; the state of things may usually be termed, for short, "the home". There can be desertion without previous cohabitation by the parties, or without the marriage having been consummated.

The person who actually withdraws from cohabitation is not necessarily the deserting party. The fact that a



husband makes an allowance to a wife whom he has abandoned is no answer to a charge of desertion.

The offence of desertion is a course of conduct which exist independently of its duration, but as a ground for...it must exist for a period of at least...years immediately preceding the presentation of the petition or, where the offence appears as a cross-charge of the answer. Desertion...differs from the statutory grounds on adultery and cruelty in that the offence founding the cause of action of desertion is not complete, but is inchoate, until the suit is constituted, Desertion is a continuing offence.”

25. Therefore, desertion is a matter of inference which has to be drawn from the facts and circumstances of each case. The wife went for the Aadi to her parents home and stayed there for more than the statutory period establishes the fact that she was not willing to come back to the matrimonial home.

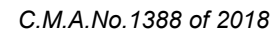
26. Reverting back to this case, on the last date of Aani in the year 2013, the respondent was admittedly taken to her parents residence by her mother and father, and thereafter, she did not return to the matrimonial home. After three years, she has issued legal notice for restitution of conjugal rights in the month of August 2016. Therefore, the respondent



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has chosen to adopt the course of conduct which proves *animus deserendi* amounting to willful neglect. The fact that the respondent preceding the date of the petition, continuously living in separation from the petitioner for three years would explicate the intention of the respondent to desert her husband. It is also relevant to note that an offer to join the other spouse after desertion cannot prove *animus revertendi* unless such offer is actually complied with. The respondent has also on the other hand not shown any good cause for separation. Mere issuance of legal notice for restitution of conjugal rights by the respondent/wife cannot be taken to be bonafide attempt to get back the aggrieved spouse. The offer of reconciliation which was putforth by the respondent to the effect that she went to her husband home, but she was prevented from talking to her husband is not believable. When the relationship is strained, it is quite natural that the girl would not be sent to her husband home all alone. Therefore, the petitioner has proved that desertion without reasonable cause subsisted throughout the statutory period.

27. It is pellucid that both have got separated for a long period of time, after exchange of notices and after presentation of petition for divorce. Then a strong presumption arises that their marriage has become unworkable one. When that be the situation, it is high time for the



28. In consideration of the fact that the petitioner and the respondent after their marriage lived about for a month and the cruel acts alleged can never be considered as acts of cruelty. However, as per the discussions made supra, the petitioner has succeeded in establishing his case on the ground of desertion. Sequel to this, the order passed by the Family Court, Villupuram dated 02.04.2018 in H.M.O.P.No.66 of 2016 stands set aside and the marriage that took place on 10.06.2013 at Villupuram, Sri Anjaneyar Marriage Hall between the petitioner and the respondent stands annulled.

29. Accordingly, this Civil Miscellaneous Appeal stands allowed.
There is no order as to costs.

(J.N.B.,J.) (R.K.M.,J.)

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Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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J.NISHA BANU, J.

and

R.KALAIMATHI, J.

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To

The Family Court, Villupuram

Pre-Delivery Judgment made in

C.M.A.No.1388 of 2018

11.09.2024