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C.M.A.No.1155 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.06.2024

Pronounced on:12.07.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.No.1155 of 2021

P.M. Vijay Manjunath

... Appellant / Petitioner

vs.

1. R.J. Gokulapriya W/o. P.M. Vijay Manjunath

2. Ashok Kumar Gnanavel S/o. Gnanavel ... Respondents / Respondents

PRAYER: The Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, 1984 to set aside the judgment and decree dated 23.10.2019 in O.P. No.162 of 2019 on the file of Family Court, Krishnagiri.

For Appellant : Mr. K.V. Sajeev Kumar

For Respondents : Mrs. Chitra Sampath,
Senior Counsel



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for Mr. T.S. Baskaran [for R1]

No appearance [for R2]

JUDGMENT

(Judgment of the Court was made by P.DHANABAL,J.)

The Civil Miscellaneous Appeal has been preferred as against the fair and decretal order passed in H.M.O.P No.162 of 2019 on the file of Family Court, Krishnagiri, wherein the appellant herein filed a petition for divorce on the ground of cruelty and also filed for compensation of Rs.50 lakhs and the same was dismissed by the Trial Court. Aggrieved by the said order, the present appeal is filed.

2. The brief facts before the Trial Court are as follows:-

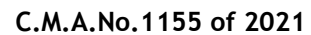
The 1st respondent is the wife of the petitioner. The 2nd respondent is the paramour of 1st respondent. The marriage between the petitioner and the 1st respondent took place on 14.02.2013 at Krishnagiri District and thereafter the same was registered at Pochampalli. At the time of marriage, the 1st respondent was a final year college student and after the marriage, they lived only for 10 days. The 1st respondent left the matrimonial home and went to complete her studies and stayed in the hostel. After completion of her studies in May 2013, she reluctantly returned to the



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matrimonial home. Thereafter, the 1st respondent disclosed that she had arrears in her academic examinations and she needs to write her exams and the petitioner made arrangements to escort the 1st respondent to her college, but she shouted the petitioner and she stated that she was in love with the 2nd respondent and she was forced to marry the petitioner against her wishes. The 1st respondent also insulted the petitioner in front of her parents and she insulted the petitioner in filthy language and called his name like 'blacky' and 'dirty fellow'. After the advice of elders, she reluctantly returned to the petitioner's home. Thereafter, she gave photograph of the 2nd respondent and told the petitioner that she is madly in love with the 2nd respondent. In the month of August 2013, the petitioner approached the 1st respondent to live with him, but the 1st respondent scratched the petitioner on his face and hit him on his head and abused him with obscene words. Thereafter, she threw her mangal sutra on the petitioner. The petitioner learnt that the 1st and 2nd respondents were continuing their illicit relationship. Thereafter, panchayat was held and the 1st respondent did not deny the relationship and acknowledged that still she is in active and voluntary relationship with the 2nd respondent. Further the petitioner discovered incriminating emails and mobile phone messages



3. The brief averments of the counter filed by the respondents

The petition is not maintainable either in law or on facts. The marriage between the petitioner and the 1st respondent is admitted. It is false to state that the 2nd respondent is paramour of the 1st respondent. The 1st respondent is no way connected with the 2nd respondent and he is utter



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stranger to her. It is true that at the time of marriage, the 1st respondent was a final year college student. In fact, after marriage, the petitioner took the 1st respondent to Bangalore and they resided there from the month of June to August 2013. Thereafter, she was taken by the petitioner to the house of his aunt, there dispute arose that the petitioner abandoned the 1st respondent and left the place and the 1st respondent is remaining with her parents. It is false to state that the 1st respondent refused to cooperate to consummate the marriage and live as husband and wife. In fact, the marriage was consummated, the petitioner cohabitated with the respondent and that she was conceived through him and a male child named V. Vedarth was born after the wedlock on 02.05.2014. It is false to state that after about 10 days, the 1st respondent left the matrimonial home and went to complete her studies. In fact, only with the permission and suggestion of the petitioner, the 1st respondent continued her studies by staying in the college hostel and joining the petitioner. The 1st respondent completed her studies in May 2013. It is false to state that the 1st respondent abused in filthy language and shouted that she was in love with the 2nd respondent and she was forced to marry the petitioner against her wishes. It is false to state that the 1st respondent began to cry and she allegedly belonged to the



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2nd respondent and the 2nd respondent is allegedly her husband and then she allegedly showed the photograph of the 2nd respondent and told him that she is madly in love with the 2nd respondent. The 1st respondent never ill-treated the petitioner as alleged by him and she never threatened him to file dowry and domestic violence case against him and his family. It is false to state that the petitioner allegedly discovered incriminating emails and mobile phone messages between the 1st and 2nd respondents and it is also false to state that the 1st respondent has the tendency of suicide and on many occasions threatened that she will commit suicide and implicate the petitioner and his parents as the cause. In fact, the petitioner's family demanded dowry stating that the parents of the 1st respondent did not provide car worth about Rs.10 lakhs and they demanded to bring a sum of Rs.50 lakhs and the same was refused by the 1st respondent. Thereby, the petitioner went to the extent by stating that he will implicate her chastity with some other persons and spoil her life. On 02.05.2014, the 1st respondent gave birth to a male child and the same was intimated to the petitioner and his family persons, whereas the petitioner went to the extent of stating that the child was not born through him. Due to the non-fulfillment of dowry as demanded by the petitioner and his men, they



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ruined the life of the 1st respondent and filed the petition with false allegations. Therefore, the petition is liable to be dismissed.

4. Before Trial Court, on the side of petitioner, he examined PW1 and marked Ex.P.1 to Ex.P.13. On the side of respondents, RW1 to RW3 were examined and Ex.R1 to Ex.R3 were marked. The Trial Court, after analysing the evidence adduced on either side, dismissed the petition.

5. Aggrieved by the said order, the present Civil Miscellaneous Appeal is filed on various grounds.

6. The learned counsel appearing for the appellant would contend that the appellant and the respondent are husband and wife and their marriage took place on 14.02.2013. After the marriage, a male child was born to them. Immediately after 10 days from the date of marriage, the 1st respondent made quarrel with the appellant and she refused to co-operate with the appellant and she had illicit relationship with the 2nd respondent. The respondent openly proclaimed that she will live with the 2nd respondent and some incriminating email communications also exchanged between the 1st and 2nd respondents, thereby he sought for divorce on the grounds of cruelty before the Trial Court. In order to prove his case, he



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examined himself as PW1 and marked Ex.P1 to Ex.P.13, but the Trial Court failed to consider the evidence of PW1 and dismissed the petition.

Therefore, the Trial Court failed to consider the Ex.P.6, email communications extracted through proper channel, in which the 1st respondent had exchanged intimate communications with the 2nd respondent, thereby proving the adulterous act of the 1st and 2nd respondents. The Trial Court failed to consider various photographs produced by the appellant, which were retrieved by Cyber Evidence Archival Center, which is the recognized and authorized cyber agency, through a report to the Court. The Trial Court wrongly came to a conclusion because of the DNA test conducted for paternity of their son came to be positive in favour of the 1st respondent. Therefore, the order passed by the Trial Court is liable to be set aside by allowing this appeal.

7. The learned counsel appearing for the respondents would contend that the appellant leveled false allegations as against the 1st respondent. Being a dutiful wife, she had performed her duties to the appellant as dutiful wife. The appellant along with her family members, demanded dowry and the same was denied by the parents of the 1st respondent and



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thereby, the appellant leveled false allegations as against the 1st respondent and the 1st respondent went to the extent of denial of paternity of the child born to them and thereafter as per the DNA test, it was proved that the appellant is the biological father of the child. Thereafter, he created email communications as if they were sent by the 1st respondent to the 2nd respondent. In fact, the 1st respondent does not know anything about the 2nd respondent and the so called email communications have been retrieved from the private agency and they submitted a report and the said person, who retrieved the said email communications has not been examined as witness. Therefore, those email communications have not been proved in accordance with law. The Trial Court also in the order, after elaborate discussion, held that the password is very well known to the appellant and he is also a computer science engineer and when he admitted that he can able to open the laptop without any password, thereby there is possibility to send emails by the appellant himself. While the Court asked to produce his laptop, the appellant refused to produce the said laptop and thereby, drawn adverse impression and hence the Trial Court, after considering the evidence, correctly dismissed the petition. Therefore, the order passed by the Trial Court is in accordance with law and the present



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appeal is liable to be dismissed.

8. This Court heard both sides and perused all the materials available on record.

9. Upon hearing both sides and perusing the records, the *points for determination* are as follows:-

(i) whether the appellant has proved the ground for divorce under Section 13(1)(i)(ia) of Hindu Marriage Act.

(ii) whether the petitioner is entitled to decree for divorce on the ground of 'adultery' and 'cruetly'.

10. Point No.1: In this case, there is no dispute in respect of the relationship between the parties and the marriage between the parties. It is also admitted that a male child was born to them. While so, the appellant filed the petition for granting divorce on the ground of 'adultery' and 'cruelty'. According to the appellant, the 1st respondent had illicit intimacy with the 2nd respondent and she openly proclaimed that she had illicit intimacy with the 2nd respondent, thereby she refused to live with the



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appellant and also refused for matrimonial relationship with the appellant.

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Thereafter, a male child was born to them. Initially, the appellant refused the paternity of the child and thereafter, DNA test was conducted and through DNA report, it has been proved that the child was born to the appellant and the 1st respondent and the appellant is the biological father of the child. In order to prove the case of the appellant before the Trial Court, he examined himself as PW1 and Ex.A.1 to Ex.A.13 were marked. But there is no evidence to prove the allegations made by the appellant for the ground of adultery. Further, PW1 in his evidence, nowhere stated that he directly saw the 1 & 2 respondents together. He only relied upon email communications and the photographs taken from the cellphone. Those email communications and photographs were said to be taken from the cellphone of the 1st respondent through some agency. In order to prove the said email communications, the appellant has not even examined the above said person, who retrieved the mails and photographs from the cell phone of the 1st respondent. Moreover, there is chance to send emails by the appellant himself since he is able to operate the laptop and mobile phone of the 1st respondent without any password, but however there is no proof in this regard. The appellant who filed the petition, only has to prove the



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grounds raised by him in the petition. But there is no evidence to attract the provisions of Section 13(1)(i)(ia) of Hindu Marriage Act, which is the ground of 'adultery' and 'cruelty'. The evidence of PW1 is not sufficient to prove the grounds raised by the appellant in the main petition. Thus, the point is answered.

11. **Point No.2:** As far as the ground of 'cruelty' is concerned, the petitioner made allegations as against the 1st respondent that she harassed the petitioner and abused him with filthy language towards him and she along with her mother insulted in the presence of her parents and others, but there is no sufficient evidence adduced by the petitioner to prove the same. As far as the ground of adultery is concerned, the appellant has only made bald and vague allegations about the illicit relationship between the 1st and 2nd respondents. No sufficient proof filed by the appellant to attract the ground of adultery. Therefore, there is no sufficient evidence adduced by the petitioner to prove the grounds raised by him to dissolve the marriage between the petitioner and the 1st respondent on the ground of 'adultery' and 'cruelty'. In this context, the Trial Court also after elaborate discussion and also after referring decisions of Hon'ble Apex Court and



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this Court correctly dismissed the petition. Therefore, there is no infirmity or perversity found in the order of the Trial Court and the order of the Trial Court is a very reasoned order and it does not warrant any interference. Thus the point is answered.

12. In the result, the Civil Miscellaneous Appeal is dismissed by confirming the fair and decretal order dated 23.10.2019 made in O.P. No.162 of 2019 on the file of Famil Court, Krishnagiri. No costs. The connected civil miscellaneous petition is closed.

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

12.07.2024

mjs

Internet : Yes

Index: Yes/No

Neutral Citation: Yes/No

J.NISHA BANU,J

and

P.DHANABAL,J

(mjs)

To

The Famil Court, Krishnagiri.



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Pre-delivery judgment in
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