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C.M.A.No.694 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2024

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE P.DHANABAL**

C.M.A.No.694 of 2023
and C.M.P.No.7785 of 2024

V.Gopi

.. Appellant

Vs.

M.Keerthana

.. Respondent

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act r/w. Order 41 Rule 1 of Civil Procedure Code, to set aside the judgment and decree dated 16.11.2022 made in F.C.O.P.No.178 of 2019 on the file of the Family Court, Namakkal.

For Appellant : Mr.T.N.Rangesh Kanna

For Respondent : Mr.T.Muthukrishnan



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JUDGMENT

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(Judgment of this Court was made by the Hon'ble Mr.Justice P.Dhanabal)

This Civil Miscellaneous Appeal has been preferred as against the fair and decretal order passed by the District Judge, Family Court, Namakkal in F.C.O.P.No.178 of 2019 on 16.11.2022 wherein the respondent herein had filed a petition under Section 13(1)(1a) of Hindu Marriage Act, to dissolve the marriage solemnised between her and the respondent on 27.12.2013 at Bandra Saibaba Temple, Maharashtra. The said petition was allowed and the marriage between the petitioner and respondent was dissolved through a decree of divorce.

2. The brief facts of the petition filed by the petitioner / wife before the trial Court are as follows:

The petitioner is the wife and the respondent is the husband before the trial Court. The marriage between the petitioner and the respondent was solemnised on 27.12.2013 at Bandra Saibaba Temple, Maharashtra, in the presence of their relatives and friends. Since their marriage was a love marriage, no invitation card was printed. At the time of marriage the



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petitioner was pursuing her 1st year in M.B.B.S. Degree and the respondent had completed B.Ed. Degree. After the marriage, the petitioner continued her studies. After one year of marriage, the respondent asked the petitioner not to continue her studies and also abused her with obscene words and when he was in inebriated mode, he assaulted the petitioner. When the same was informed to the in-laws of the petitioner / wife, they have also not taken any steps. Due to the cruelty made by the respondent / husband, the petitioner left the matrimonial home on 28.10.2016 and went to her parent's house. Thereafter, she completed her degree with the help of her parents. Later, the respondent approached the petitioner and assured to live with her without causing any harassment. Even after that when she was staying in the college hostel, the respondent / husband used to suspect the petitioner's character and abused her with obscene words. Again a panchayat was convened between the petitioner and the respondent and the respondent went back to her matrimonial home. Later, the respondent again suspected the petitioner's character and used to checked her mobile phone and abused her with obscene words. By suspecting her character, the respondent used to beat her often. Finally, on 29.04.2018 the respondent assaulted the petitioner / wife and driven her out of the



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matrimonial home. Therefore, the petitioner / wife had filed a petition seeking divorce on the ground of cruelty.

3. The brief averments of the counter filed by the respondent / husband are as follows:

The petition is false and frivolous and the same is not maintainable. The marriage between the petitioner and the respondent is admitted. The petitioner / wife had not taken any steps for reunion with the respondent / husband. Per contra, the respondent filed a petition for restitution of conjugal rights in F.C.O.P.No.1/2020 and the same is pending. In fact the petitioner is suffering from 'Epilepsy' and thereby she was unable to pursue higher studies. However, she wanted to pursue her medical degree and the respondent also agreed to help her. While she was in hostel at Thoothukudi Medical College, she was affected from some disease and surgery was also done to her. Therefore, she was unable to write the exam and the respondent incurred a sum of Rs.4,00,000/- towards her medical expenses and also he incurred a sum of Rs.4,50,000/- towards her studies. While the facts are being so, with false allegation the petitioner has filed this petition. The respondent is always ready to live with the petitioner. The parents of



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the petitioner insisted the respondent to receive Rs.3,00,000/- for another marriage and the same was refused by him and thereafter the petitioner filed this petition with false allegations. Therefore this petition is liable to be dismissed.

4. Before the trial court, on the side of the petitioners, P.W.1 & P.W.2 were examined and Exs.P1 to P9 were marked and on the side of the respondents R.W.1 and R.W.2 were examined and Exs.R1 and R2 were marked. After considering the evidences adduced on both sides, the trial Court allowed the petition and granted divorce by dissolving the marriage between the parties. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been preferred by the husband.

5. The learned counsel appearing for the appellant / respondent would contend that the respondent herein has filed a petition seeking divorce on the ground of cruelty but the said cruelty has not been proved by the petitioner through sufficient evidence. The trial Court failed to consider the evidences on the side of the appellant / respondent. The trial Court has wrongly held that the appellant / respondent had not taken any steps for



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reunion and also failed to consider the fact that the appellant has categorically pleaded and in his evidence he stated that he is ready to reunion with the respondent / wife. The case of the appellant clearly establishes that there is no ground to allow the petition for divorce and the trial Court nowhere discussed about the cruelty made by the appellant. Therefore the fair and decretal order passed by the trial Court are liable to be set aside.

6. The learned counsel appearing for the respondent would contend that the appellant being the husband of the respondent caused cruelty by assaulting her and also by abusing her with obscene words. In fact the marriage between the appellant and the respondent is a love marriage. When the respondent / wife studying in medical college, the appellant / husband used to speak with her through phone and very often he suspected her character and also many times he assaulted her and thereby the respondent / wife filed a petition for divorce. On the side of the respondent / petitioner P.W.1 and P.W.2 were examined and Exs.P1 to P9 were marked. The respondent had categorically deposed about the cruelty caused by the appellant. Therefore, the trial Court, after elaborate discussion, allowed the



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petition for divorce. Hence, the present appeal has no merits and the same is liable to be dismissed.

7. This Court heard both sides and perused the records. Upon hearing both sides and perusing the records, the points for determination in this appeal are as follows:

“ (i)Whether the judgment and decree passed by the trial Court are sustainable and whether the appeal has to be allowed or not ?”

8. For the sake of convenience and brevity, the parties are hereinafter will be referred to as per their status before the trial Court.

9. The petitioner is the wife and the respondent is the husband before the trial Court. Their marriage between them was solemnised on 27.12.2013 at Bandra Saibaba Temple, Maharashtra. After marriage they lived at Namakkal District. The above said facts are admitted by both the parties. After marriage, the petitioner studied at Thoothukudi Medical College. While that being so, the respondent caused cruelty to her by suspecting her character and also assaulted her. Therefore, the petitioner /



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wife filed a petition for granting divorce on the ground of cruelty. The respondent / husband denied all the allegations and he filed a counter stating that he is ready to live with the petitioner and he never caused cruelty to the petitioner as alleged in the petition.

10. While the petitioner was staying in the hostel at Thoothukudi Medical College, she was affected by illness and she was subjected for surgery. It is claimed by the learned counsel for the respondent / husband that the respondent had spent more than a sum of Rs.4,00,000/- towards the petitioner's medical expenses and also spent a sum of Rs.4,50,000/- for her studies and therefore he was very affectionate towards the petitioner and he was always ready to live the petitioner.

11. In order to prove the case of the petitioner, on her side P.W.1 and P.W.2 were examined and Exs.P1 to P9 were marked. On the side of the respondents R.W.1 and R.W.2 were examined and Exs.R1 and R2 were marked. P.W.1 had deposed about the cruelty caused by the petitioner. She specifically stated that the respondent abused her with obscene words and also demanded dowry and by intoxication he assaulted the petitioner.



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When the petitioner was staying in the hostel, the respondent used to suspect her about her character by reading his chats in the mobile.

12. The above said facts have been evasively denied by the respondent / husband and the respondent also stated that he paid college fees for the petitioner. But, the petitioner has produced the receipts for payment of College fees and hostel fees. Further R.W.1 who is the respondent herein in his cross-examination admitted that he already filed a petition for restitution of conjugal rights and the same was withdrawn by him. Had the respondent really wanted to live with the petitioner, he ought to have proceeded with the case filed by him. But the same was withdrawn by him. That shows that he is not willing to live with the petitioner.

13. The respondent also admitted that they are living separately and hence he filed a petition for restitution of conjugal rights. The evidence of P.W.1 is cogent and nothing is elicited through cross-examination and thereby the evidence of P.W.1 is acceptable. As per the evidence of P.W.1, the respondent / husband caused cruelty. Therefore, this Court is of the view that the petition filed by the petitioner / wife is liable to be allowed



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and the petitioner is entitled to the relief of divorce on the ground of cruelty.

14. The trial Court, after elaborate discussion, has rightly allowed the petition and granted divorce on the ground of cruelty. Therefore, the judgment and decree passed by the trial Court is in order and warrants no interference and the present appeal has no merits and deserves to be dismissed. Thus the point is answered.

15. In the result, the Civil Miscellaneous Petition is dismissed and the judgment and decree passed by the learned District Judge, Family Court, Namakkal, in F.C.O.P.No.178 of 2019 dated 16.11.2022 is hereby confirmed. No costs. Connected miscellaneous petition is closed.

(J.N.B. J.,)

(P.D.B. J.,)

24.06.2024

Index: Yes / No

Speaking order / Non speaking order

Neutral Citation : Yes / No

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The District Judge,

Family Court, Namakkal



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

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