



C.M.A.No.1297 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.09.2024

Pronounced on : 20.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R.KALAIMATHI

C.M.A.No.1297 of 2024
and C.M.P.No.11695 of 2024

R.Siddharthan

...Appellant

vs.

Jayapriya

...Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984 to set aside the judgment and decree passed in O.P.No.2662 of 2016 on the file of the 1st Additional Family Court, Chennai dated 07.12.2023.

For Appellant : Mr.K.Anandharaja

For Respondent : Ms.B.Leena

JUDGMENT

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

Against the order of dismissal dated 07.12.2023 made in



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O.P.No.2662 of 2016 by the 1st Additional Family Court, Chennai, this Civil Miscellaneous Appeal has been preferred.

2. The O.P. (O.P.No.2662 of 2016) was filed by the husband for an order of divorce under Section 13(1) (i-a) of the Hindu Marriage Act on the ground of cruelty. Upon consideration, the Trial Court concluded that, as the allegations of cruelty levelled against the respondent/wife are not proved by the petitioner/husband and chose to dismiss the petition. Aggrieved, the petitioner/husband has preferred this appeal.

3. Case set out in the original petition is stated in brief:

Marriage between the petitioner and the respondent was solemnized on 20.05.2015 at Thiruvotriyur Arulmigu Adhipuriswarar Udanurai Vadivudai Amman Sri Thyagaraya Swami Temple as per Hindu Rites and Customs. The petitioner's marriage with the respondent is the second marriage for him. He married one Saranya and the same was dissolved by a decree of divorce on 24.06.2014 in O.P.No.46 of 2012 by the Sub-Court, Tambaram. The respondent was his friend, and he disclosed entire details to the respondent and to her mother. He was working as Software Engineer in a private company at Teynampet, Chennai. Only at the



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instance of the respondent, the marriage was fixed and solemnized. After marriage, they hired a rental house at Nammalvarpet, Chennai and were living along with the respondent's mother. The respondent used to pick up quarrel with the petitioner even for petty and silly things. The respondent never behaved as a dutiful wife and demanded money from the petitioner. She would not cook regularly and ignored the day-to-day household activities. The respondent was not taking care of the needs of the petitioner. The respondent would always be busy with her facebook friends, particularly with male friends even at the night time. When he questioned the same, she abused the petitioner by stating that he is impotent, and he is not fit for anything.

4. Furthermore, he has alleged that he was treated as a servant. The respondent and her mother frequently insulted the petitioner by criticizing his first marriage and his first wife. Due to the complaints made by the respondent and her mother to the Company where he was working, he was sent out from the Company. Upon the complaint of the respondent before All Women Police Station, Ayanavaram, both of them were given advice by the police.



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5. The respondent and her mother engaged local rowdy elements and threatened the petitioner with dire consequences. She has deserted the petitioner since December 2015. The respondent does have illegal contact with one person and she wants to marry him. The respondent used to take tablets every night for some serious ailments, and the same was suppressed by the respondents. Therefore, the petitioner seeks for an order of divorce on the grounds of cruelty as alleged supra.

6. Details of counter is given hereunder:

Marriage between both parties is admitted. Initially, they were friends and thereafter, they had love affair and got married. It is only the petitioner who forced the respondent to marry him. After marriage, for few months, they lived happily. Thereafter, the petitioner started to torture the respondent with unparliamentary words. He would never adjust with the respondent. Her mother used to come to her home to see her. As the petitioner told the respondent's mother not to come to their home, the respondent used to go to her mother's home once in a week as she is the only daughter of her mother. The petitioner did not permit her to visit her mother. One day, the respondent was driven out of the matrimonial home on 13.04.2016 and the OP for divorce was filed and since then, they are in



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separation. It is only the petitioner who has harassed the respondent and the respondent is ready to live with the petitioner peacefully.

7. At trial, the petitioner has examined himself as P.W.1 and five documents were marked. On the side of the respondent, two witnesses were examined and 12 documents. The respondent has examined herself as R.W.1 and her mother was examined as R.W.2.

8. P.W.1 has spoken in line with the details of the petition. The respondent has examined herself as R.W.1 and her mother is examined as R.W.2.

9. 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.

10.The OP was filed for divorce on the ground of cruelty.



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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.

13. Useful reference may be made as to the observations of the Apex Court made in *Dr.N.G.Dastane Vs. Mrs.S.Dastane reported in 1975 (2) SCC 326*, the Hon'ble Supreme court has held that:

“27. The misconception regarding the standard of proof in



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matrimonial cases arises perhaps from a loose description of the respondent's conduct in such cases as constituting a "matrimonial offence". Acts of a spouse which are calculated to impair the integrity of a marital union have a social significance. To marry or not to marry and if so whom, may well be a private affair but the freedom to break a matrimonial tie is not. The society has a stake in the institution of marriage and therefore the erring spouse is treated not as a mere defaulter but as an offender. But this social philosophy, though it may have a bearing on the need to have the clearest proof of an allegation before it is accepted as a ground for the dissolution of a marriage, has no bearing on the standard of proof in matrimonial cases."

14. It is relevant to refer to the observations made by the Hon'ble Supreme 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



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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.”

15. *In Samar Ghosh vs Jaya Ghosh reported in (2007) 4 SCC 511, the Hon'ble Supreme Court has held that:*

“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.”

16. *In the case of Roopa Soni Vs. Kamalnarayan Soni reported*



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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 recherche scientifique i.e. “free scientific research”...”.

17. It appears that at the first instance, the respondent lodged a complaint before All Women Police Station, Ayanavaram upon her husband on the ground that she was beaten up by her husband. But during her cross-examination, R.W.1 / wife would depose that “...அது போல் அடிக்கவில்லை, மேலோட்டமாகத்தான் அடித்தார். அந்த புகாருக்கு பின் போலீசார் எங்களை சமாதானம் செய்து சேர்ந்து வாழச்சொன்னார்கள்”. The complaint was given in the month of December 2015 after 7 years of marriage.

18. It appears that the petitioner is working as Software Engineer in a private company and the respondent is working as Drawing Teacher in a private academy.



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19. On perusal of entire records, it explicates that both became friends through facebook and the friendship turned into love affair, and got married. The petitioner is a Software Engineer and the respondent is a Drawing Teacher working in a private academy. The allegations of cruelty raised by the petitioner are,

- i. The respondent used to pick up quarrel with the petitioner even for petty matters.
- ii. She never behaved as a dutiful wife.
- iii. She demanded money from the petitioner.
- iv. The respondent will not cook regularly and ignored to participate in the day-to-day house hold activities.
- v. She failed to take care of the petitioner.
- vi. She was always very busy with her facebook friends at night times.
- vii. The respondent frequently demanded money from the petitioner and used to spent lavishly along with her mother.
- viii. The respondent as well as the respondent's mother caused continuous harassment upon the petitioner.
- ix. The respondent as well as her mother frequently insulted the petitioner by criticizing his first marriage and his first wife.



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- x. In the month of December 2015, the respondent along with her mother went to All Women Police Station, Ayanavaram lodged a false complaint against him (They were given advise by the police).
- xi. They also engaged local rowdy elements and threatened the petitioner with dire consequences.
- xii. Respondent is having illegal contact with one person and she wants to marry him.
- xiii. She has got so many boy friends through facebook.

20. To constitute the act as cruelty, the conduct complained of should be grave, and it must be something more serious than ordinary wear and tear of married life. The petitioner has forgotten for a moment that only through facebook both became friends. Therefore, when R.W.1 was in the box, during her cross-examination, she has answered that she is in a drawing teachers group and she is an active member in the said group. Now-a-days, it is a common phenomena to be a member of special group. After marriage, when the parties come from different place and from different family setup, it is not possible to understand the acts according to



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the expectations of other spouse. The mantras to be followed by the married couple are tolerance, mutual respect, mutual affection and trust upon each other. Petty quibbles and trifling differences should not be exaggerated and magnified in order to destroy the marriage, which is sacrosanct and which is made in heaven as per the Hindu Customs. The acts of cruelty have to be grave from the perspective of the petitioner. We are conscious of the fact that hypersensitive approach would be fateful to the institution of marriage. As regards the allegations raised against the respondent's mother that, she would often misbehaved with the petitioner, the respondent's mother was examined as R.W.2, but she was not cross-examined by the petitioner. Therefore, that particular allegation cannot be taken to have been proved by the petitioner / husband. Other allegations as mentioned supra cannot be taken as acts of cruelty. They are ordinary wear and tear happens in married life. As regards the health of the respondent, the evidence of respondent / R.W.1 indicates that she is under treatment for anxiety and disorder.

21. We are conscious of the fact that marriage should never be discarded unreasonably for filthy reasons and it should be preserved. Marriage is a sacred as per Hindu Vedas. They married in the month of



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May 2015 and got separated since 13.04.2016, the day on which the petitioner left the matrimonial home. As mentioned supra, after seven months from the date of marriage, at the first instance, the respondent / wife lodged a complaint before the All Women Police Station, Ayanavaram that, she was beaten up by her husband and upon advice of the police, the said complaint was closed.

22. From the evidence of P.W.1 and R.W.1, we do not find any strong reasons for the separation. On the other hand, the petitioner has admittedly left the matrimonial home on 13.04.2016 and thereafter, this O.P. for divorce was filed by the petitioner / husband on the ground of cruelty. In the pre-trial counseling also, they did not come to a positive decision to reunite. Therefore, it is clear that they are not in a position to reconcile the difference and since April 2016, they are in separation for almost eight years. At present, except the marriage tie, the relationship between the spouse has completely broken down. At this juncture, the law has to take note of the real situation. The emotions and feelings of the parties have to be given due regard. In the given circumstances, refusing to discard the marital tie will not serve any purpose.



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23. Considering the fact that the appellant is working as Software Engineer in a private company and respondent is working as a Drawing Teacher in a private academy, in order to meet ends of justice, an amount of Rs.8,00,000/- [Rupees Eight Lakhs only] is ordered as permanent alimony and the appellant is directed to pay the said sum within a period of four weeks from the date of receipt of a copy of this Order.

24. Based on the aforesaid discussions, it is better for the parties to the proceedings to discard their marital tie once for all and in order to do effective justice, this Civil Miscellaneous Appeal stands allowed. Sequel to this, the order passed by the first Additional Family Court, Chennai dated 07.12.2023 in O.P.No.2662 of 2016 stands set aside and the marriage that took place between the appellant and the respondent on 20.05.2015 at Thiruvotriyur Arulmigu Adhipuriswarar Udanurai Vadivudai Amman Sri Thyagaraya Swami Temple stands dissolved by granting an order of divorce. No costs. Consequently, connected Civil Miscellaneous petition stands closed

(J.N.B.,J.)

(R.K.M.,J.)

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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation Case : Yes/No

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J.NISHA BANU, J.

and

R.KALAIMATHI, J.

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To

The 1st Additional Family Court, Chennai

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Pre-Delivery Judgment made in

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and C.M.P.No.11695 of 2024

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