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C.M.A.No.1344 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.07.2024

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE P.DHANABAL

C.M.A.No.1344 of 2024

Dr.Umadevi

...Appellant

Vs.

M.Gnanasuriyan

...Respondent

PRAYER: Civil Miscellaneous Appeal filed under Sec 19 of Family Courts Act,1955 r/w Section 28(4) of Hindu Marriage Act,1955, against the order and decree dated 20.05.2024 made in O.P.No.4734 of 2018 passed by the learned V Additional Family Court at Chennai .

For Appellant : Mr.K. Muthuramalingam

For Respondent : Mr.Syed Nizamuddin Ahmed



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JUDGMENT

(Judgment of the Court made by **J.NISHA BANU, J.**)

The appellant/wife has preferred the present Civil Miscellaneous Appeal as against the decree passed by the V Additional Family Court, Chennai, whereby, the petition filed by her seeking divorce under Section 13(1)(ia) of the Hindu Marriage Act (in short, 'the Act'), on the ground of cruelty, was dismissed on 20.05.2024.

2. Before the Trial Court, on the side of appellant, the appellant herself was examined as P.W.1 and 6 documents were marked as Ex.P1 to Ex.P6 as exhibits. On the side of the respondent, the respondent/husband was examined as R.W.1 and no exhibits were marked. The Trial Court, after analysing the pleadings, counter and evidence adduced on both sides, dismissed the petition filed by the wife on a finding that the petitioner/wife has not proved mental and physical cruelty and adultery alleged against the respondent/husband by preponderance of probabilities and by cogent oral and documentary evidence. Aggrieved by the said order of dismissal, the



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appellant/ wife has preferred the present civil miscellaneous appeal.

3. The marriage between the appellant and the respondent took place on 06.07.1997 at Puthusurangadi Marriage Hall, Royapuram, Chennai as per Hindu rights and Customs. After marriage, twin daughters were born to them. The case of the appellant is that subsequent to the marriage, the appellant endured prolonged periods of cruelty at the hands of the respondent and his family members. Moreover, the respondent has misappropriated funds from the appellant for the purpose of gambling.

4. A perusal of the order passed by the court below would go to show that other than OP case for divorce between the parties, both parties lodged complaint against each other. FIR was registered by the husband against the wife, GWOP filed by the wife for visitation rights. The court below after going through entire pleadings and evidence found that the petitioner/wife has not proved the allegations by filing any documents and thereby dismissed the petition for divorce.

5. We have heard the learned counsel appearing for the appellant



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as well as the respondent and perused all the materials available on record.

6. Cruelty may be physical or corporeal or may be mental. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes. The Hon'ble Supreme Court has given new angle to the concept of mental cruelty in matrimonial matters. The following two cases need to be looked into:

1. In the case of ***Smt. Chanderkala Trivedi v. Dr. S.P. Trivedi***, reported in **JT 1993 (4) SC 644**;
2. In the case of ***V. Bhagat v. Mrs.D. Bhagat***, reported in **AIR 1994 SC 710**.

In the above cases, mere allegations and counter allegations, without proof thereof, have been held to have constituted cruelty, as it was found that the marriage, after such allegations could not in any circumstance be continued any further.

7. In ***Chanderkala's*** case, in a petition filed by the husband for



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divorce on the ground of cruelty, when the wife filed a written statement alleging intimacy of the husband with another lady doctor, the husband came out with a case of undesirable association of the wife with young boys. When the divorce petition was tried by the lower court and was dismissed, whereas the High Court granted divorce on the ground of cruelty. The wife filed the appeal. The Hon'ble Supreme Court maintained the decree for divorce on certain conditions that the husband would provide a flat and Rs. 2 lakhs for the welfare of the wife and the findings of fact recorded by the lower courts were deleted. Justice A.M. Sahai, has observed that, "Whether the allegation of the husband that she was in the habit of associating with young boys and the findings recorded by the three courts are correct or not but what is certain is that once such allegations are made by the husband against wife as have been made in this case, then it is obvious that the marriage of the two cannot in any circumstance be continued any further. The marriage appears to be practically dead."

8. The term 'cruelty' is well explained by the Hon'ble Apex Court in the judgment reported in *A. Jayachandra Vs. Aneel Kaur* reported in



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(2005) 2 SCC page 22, and the relevant paragraphs are extracted as follows:-

10. The expression “cruelty” has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and



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wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

11. The expression “cruelty” has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the



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impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

9. In the light of the above decisions and taking note of the facts in the present case that the appellant and the respondent are separated for the past nine years and that there is no possibility of reconciliation between the parties and the nature of allegations complained of, which otherwise could be regarded as cruelty, we are of the opinion that the dismissal of the divorce petition by the court below did not help the parties to unite and live a peaceful matrimonial life, but the bond is irretrievably broken. Therefore, we feel that the dismissal order passed by the court below need to be interfered with.



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10. In the result,

(i) This Civil Miscellaneous Appeals is Allowed. The fair and decretal order dated 20.05.2024 passed in O.P.No.4734 of 2018 by the learned V Additional Family Court, Chennai, is set aside and the petition is dismissed.

(ii) The marriage between the appellant and the respondent, is hereby dissolved by granting a decree of divorce. No costs.

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

24.07.2024

Internet : Yes/No

Index: Yes/No

Speaking Order: Yes/No

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To:

The V Additional Family Court,
Chennai.



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