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C.M.A.Nos.3375, 2212 and 2213 of 2019

and Cros.Obj.No.32 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.11.2024

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.Nos.3375, 2212 and 2213 of 2019

and Cros.Obj.No.32 of 2019

CMA N0 3375 of 2019

Priyadharsini

...Appellant

VS.

Bathmanaban

...Respondent

CROS.OBJ No.32 of 2019

Priyadharsini

..Cross Objector

VS.

Bathmanaban

...Respondent

CMA N0 2212 of 2019

Bathmanaban

...Appellant

VS

Priyadharshini

...Respondent



C.M.A.Nos.3375, 2212 and 2213 of 2019
and Cros.Obj.No.32 of 2019

CMA N0 2213 of 2019

Bathmanaban

..Appellant

Vs

Priyadharshini

...Respondent

Prayer In CMA N0 3375 of 2019 :- This CMA filed under Section 19 of the Family Courts Act, as against the Judgment and Decree of the Principal Family Court, Chennai dated 09.01.2019 made in O.P.No. 2375 of 2018.

Prayer In CROS.OBJ No 2019 :- Cross objection filed to set aside the findings in so far as they are against the cross objector and not germane to return of money in the common judgment and decree dated 09.01.2019 in I.A.No. 5412 of 2018 in O.P.No. 2375 of 2018 on the file of Principal Family Court Chennai.

Prayer in CMA N0 2212 of 2019:- This appeal filed praying to common judgment and decree dated 09.01.2019 in I.A.No. 5412 of 2018 in O.P.No. 2375 of 2018 on the file of Principal Family Court Chennai.

Prayer in in CMA N0 2213 of 2019:- This appeal filed praying to common judgment and decree dated 09.01.2019 in I.A.No. 5758 of 2018 in O.P.No. 2375 of 2018 on the file of Principal Family Court Chennai.



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In CMA No 3375 of 2019 and CROS.OBJ No 2019

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For Appellant/Cross Objector: Mr.Muthu Visakan K.V

For Respondent: Mr.P.Suresh Babu

In CMA Nos 2212 and 2213 of 2019

For Appellant: Mr.P.Suresh Babu

For Respondent: Mr.Muthu Visakan K.V

COMMON JUDGMENT

J.NISHABANU, J.

C.M.A.No.3375 of 2019 has been filed by the appellant/wife against the order passed in O.P.No. 2375 of 2018 on the file of the Principal Family Court, Chennai, whereby the petition for divorce filed by the respondent/husband against the appellant/wife has been allowed.

2. FACTS LEADING TO THE CASE

2.1. The case of the respondent/husband before the trial court in O.P.NO.2375 of 2018 is that the marriage between the appellant/wife and the respondent/husband was solemnized on 15.11.2015 at Puducherry according to Hindu rites and customs. At the time of marriage, the respondent/ husband was working as Assistant Professor, Anna University in Nagapattinam district



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and the appellant/wife was working as Senior Business Consultant in a Private Limited Company at Chennai.

2.2 After marriage, the respondent/husband was forced to leave his parents home in Puducherry to live with the appellant/wife in Chennai as she wanted the respondent/husband to join her hands financially by offering his entire income and thereby he was financially exploited by the appellant/wife. It is also stated that the appellant/wife had a cruel behaviour towards the respondent/husband and she used to pick up quarrels by using filthy words. She used to ill-treat the respondent/husband before the elders and other family members, whenever questioned about her misbehaviour.

2.3. It was also stated that he tolerated all the alleged cruelty from the appellant/wife to protect his family's reputation, but the appellant/wife threatened the respondent/husband and his family with false dowry and theft charges whenever he tries to come down to his parental house. In the month of February 2017, he was forced to pledge the ring which was gifted to him at the time of marriage for which she physically assaulted the respondent/husband referring him as a thief.



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2.4. Finally, on 01.07.2017, he left the appellant/wife's home and returned to Puducherry to stay with his parents and resume his work. It is also stated that the appellant'/wife's father, Manivannan, and uncles have repeatedly threatened the respondent/husband over the phone, through text messages, and via a mutual friend, Lenin Babu. Police complaint was also filed on 12.08.2017, but the threats continued. The respondent/husband also claimed that the appellant/wife has not fulfilled her duties as a wife, and there are no issues borne out of marriage. Since reconciliation efforts have failed, the respondent/husband filed a petition for divorce on the grounds of cruelty.

2.5. In reply to the petition for divorce filed by the respondent/husband, the averments made by the appellant/wife before the trial court in O.P.NO.2375 of 2018 is that the respondent/husband before the marriage misrepresented his employment and salary, claiming to have a permanent position as an Assistant Professor at Anna University, Thirukuvalai, and promising a transfer to Chennai after marriage. Trusting these assurances, the appellant/wife and her family agreed to the marriage, as she was working in Chennai.



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2.6. It is also stated that after the marriage, the respondent/husband and his parents demanded dowry including 60 sovereigns of gold, a car, and household items. They had also falsely claimed that the respondent earned Rs. 50,000/- per month from his job and an additional Rs. 85,000/- per month from private tuition. Despite financial constraints, the appellant's parents met these dowry demands.

2.7. The appellant's father spent Rs. 4,50,000/- for betrothal ceremony and luxuriously performed the function as per the respondent/husband family's demands and provided jewellery's, silver vessels, and cash gift of about Rs.35,000/-. After the marriage, when the appellant went to the respondent/husband's house at Puducherry on 17.11.2015 his mother and sister after measuring it, they forcibly took back the appellant's jewellery and insisted that a new Toyota Etios car be registered in the respondent's name, which led to ill-treatment when her father refused.

2.8. The respondent's father had also funded for their honeymoon trip for betterment, even then respondent/ husband constantly criticized her



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appearance and repeatedly demanded more jewellery, making the trip distressing. Later, the appellant discovered that the respondent/husband was only a Guest Lecturer and had not completed his Ph.D., contrary to his prior claims. Despite feeling deceived, she consoled herself for the family's sake. They started to live together in Selaiyur, Chennai for which her father bought furniture and all household articles and also paid a sum of Rs. 65,000/- as house advance.

2.9. The respondent claims that during weekends at Puducherry, the respondent and his family mocked her for her obesity and pressured her for more dowry and jewellery. It is stated that it was her father who borne all wedding expenses of about Rs. 8,00,000/- while the respondent and his family did not contribute. Even the mangal sutra which is usually provided by the groom's family had to be purchased by her parent's. She further accuses the petitioner of being a spendthrift, misusing her debit card, frequently travelling at her expense, and siphoning off lakhs of rupees meant for his Ph.D. Instead of completing his studies, he allegedly spent the money lavishly.



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2.10. The appellant/wife alleges that the respondent's true intention was to extract money from her which made her to stop paying money to him. In response, the respondent stopped visiting Chennai. She further claims that the respondent's mother and sister verbally abused her for being infertile and prevented her from staying with her husband during medical treatment. She also alleged that the respondent's family pressured her to give her jewellery for his sister's marriage, which she refused. This led to frequent fights, culminating in a violent incident on 04th February, 2017, where the respondent allegedly assaulted and locked her in a room before leaving to Puducherry, then neighbours intervened and rescued her. After months of separation, the respondent returned in the month of May 2017, promising to change his behaviour.

2.11. However, between the month of May and September 2017, the appellant/wife claims that gold jewellery (24 grams) and Rs. 30,000/- in cash went missing whenever the respondent left her house. She eventually caught him attempting to steal from her handbag. When confronted, the respondent allegedly assaulted her again and ran out from the house.



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2.12. The appellant/wife states that after an incident, she went to her home at Cuddalore, at that time the respondent/husband made false comments on Facebook and spoke vulgarly to her friends. For which, her father filed a complaint with the Superintendent of Police, followed by her own complaint at the All-Women Police Station for reuniting with the respondent. Her complaint was forwarded to the Protection Officer under the Domestic Violence Act, and she later filed a direction petition before the Madras High Court in Crl.O.P.No.2441 of 2018 which was ordered on 30.01.2018. The respondent/husband suppressed all the facts and falsely lodged a police complaint on 12.08.2017 before filing the petition for divorce. Unaware of this, her father and maternal uncle attempted to reconcile with him but were unsuccessful. They later contacted Dr. M. Duraiarasan, the Dean, who informed them that the respondent/husband had already filed for divorce.

2.13. Despite the ongoing case of the O.P, the respondent/husband registered his biodata on multiple matrimonial websites in the month of September 2017 while falsely claiming on social media that the appellant was seeking a divorce.



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2.14. The respondent/husband deserted her without any justifiable reason and has been living separately without cause. There was no valid reason for him to leave the matrimonial home, nor was there any situation that made cohabitation impossible. The respondent being her husband, is legally and morally obligated to fulfill marital responsibilities but has failed to do so, causing her great mental distress.

2.15. She further states that the respondent is solely responsible for the breakdown of the marriage, despite multiple opportunities to reconcile, which he refused. Given the circumstances, she finds living with him unsafe due to insults, economic exploitation, abuse, and both physical and mental cruelty, making cohabitation impossible.

2.16. Pending the O.P.No.2375 of 2018, the appellant/wife filed I.A.No.5412 of 2018 dated 08.10.2018 in O.P.No.2375 of 2018 to direct the respondent/husband to return cash of Rs.35,000/- and jewels mentioned in the petition or substitute to make a lump sum payment regarding the present value of the jewels for which, to the counterblast of this petition for return of



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articles along with the cash, the respondent/husband filed a counter to this

I.A.No.5412 of 2018 along with his own petition for return of articles filed under Section 27 of the Hindu Marriage Act, 1955 r/w 151 of CPC in I.A.NO.5758 of 2018 in aforesaid O.P.No.2375 of 2018.

2.17. The trial court after hearing the counsel for the appellant/wife and respondent husband and after perusing the entire records, was of the view that the respondent/husband has proved the averments of cruelty and that he is entitled to the relief of divorce on the grounds of cruelty. And on such findings the trial court held that

"In the result, the petition in O.P.2375/2018 is allowed with cost and the decree of divorce is granted thereby dissolving the marriage solemnized between the petitioner and the respondent on 15.11.2015. The petition in IA No.5412/2018 is partly allowed with costs and the jewels mentioned in the petition is ordered to be returned by the respondent/husband to the petitioner/wife within one month from to-day. As far as the relief of return of cash of Rs.35.000/- is concerned this petition is dismissed with an observation that the petitioner/wife shall work out her remedy in a manner known to law. The petition in I.A.No.5758 of 2018 is hereby dismissed with costs."

2.18. Challenging the said findings of the trial court, the appellant/wife filed this present CMA.No.3375 of 2019 against judgement and decree passed in O.P.No.2375 of 2018 dated 09.01.2019 on the file of the Principal Family



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Court, Chennai. In turn the respondent/husband filed CMA.No.2213 of 2019

against dismissal of I.A.No.5758 of 2018 to return of jewels to the respondent/husband and he also filed CMA.No.2212 of 2019 against allowing I.A.No.5412 of 2018 to return of jewels to the appellant/wife.

3. ARGUMENTS IN CMA No 3375 of 2019

3.1. The learned counsel for the Appellant/wife would submit that the respondent approached the court with false and fabricated averments, and several of his claims were retracted during cross-examination. Despite the lack of credible evidence and the production of fabricated documents (Exs. P1 to P3, P5, P6, P12, and P13), the trial court erroneously held the petitioner guilty of cruelty without proper judicial application of mind. The respondent also made baseless allegations to secure a divorce, including false claims about his qualifications and employment, which were not substantiated on record.

3.2. The learned counsel for the Appellant/wife further submits that the trial court grievously erred in condoning the respondent's false testimony and failed to consider his repeated attempts to mislead the court through oral



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assertions without any pleading. The respondent's conduct throughout reveals a deliberate and sustained attempt to obtain a decree by deceit and manipulation.

3.3. The learned counsel for the Appellant/wife respectfully submits that the judgment and decree dated 09.01.2019 passed by the learned Principal Family Court, Chennai in O.P. No. 2375 of 2018 is liable to be set aside as it is contrary to law, the weight of evidence, and the overall probabilities of the case.

3.4. The learned counsel for the respondent/husband submits that the trial court duly considered all material facts, evidence, and the demeanor of the parties before arriving at its conclusion. The allegation that the court passed a "cursory judgment" is baseless and unsubstantiated. The findings are reasoned and supported by evidence, particularly on the aspect of cruelty, which was proved through oral and documentary evidence.



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3.5. The learned counsel for the respondent/husband would submit that the petitioner's attempt to portray the respondent's allegations as false is a mere denial and does not disprove the consistent pattern of cruelty and hostile behavior. The court rightly found the respondent's version credible, especially in light of corroborative witness testimony and conduct of the petitioner during the marriage.

3.6. The learned counsel for the respondent/husband further submits that the claim that certain exhibits (P1 to P3, P5, P6, P12, P13) were "fabricated" is a sweeping allegation without any independent support. Merely being prepared after the suit does not ipso facto prove fabrication, especially when the documents relate to ongoing issues or developments. The petitioner has made repeated accusations of falsehood and malicious intent without producing conclusive proof. Retractions in cross-examination, if any, were minor clarifications and not material enough to discredit the overall case of the respondent.

4. Heard and perused the records.



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5. The appellant /husband filed CMA.No.2212 of 2019 and CMA.No. 2213 of 2019 challenging the orders of the Principal Family Court, Chennai, dated 09.01.2019 in I.A.No.5412 of 2018 and I.A.No.5758 of 2018.

6. The appellant/wife filed H.M.O.P.No.2375 of 2018 and Cross-objection No 32 of 2019 against IA 5412 of 2018 in OP No 2375 of 2018, seeking enforcement of the Family Court's decree for the return of jewels and money.

7. In CMA No 2213 of 2019, the learned counsel for the appellant/ husband contended that the Family Court misapplied Section 27 by holding that gifts given at marriage become the wife's absolute property. However, this Court finds no error in the Family Court's interpretation. Section 27 empowers the court to make just and proper provisions regarding property presented at marriage, but it does not mandate the return of gifts unconditionally. The Family Court held that jewels gifted to the wife by relatives or the husband are her absolute property, and the husband cannot reclaim them merely because the marriage failed. The appellant/ husband



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further submits that the Family Court failed to consider his petition for the return of articles, which disclosed that the jewels were in the wife's possession and the trial court held that his claim was belated and appeared retaliatory, filed only after the wife's petition.

8. In CMA No 2212 of 2019, the appellant/husband submits that Exhibit P10-FIR only mentioned dowry harassment and not theft, implying the respondent/wife's allegations were false. However, we are of the view that the absence of a theft charge in the FIR does not disprove her civil claim for the return of property. The Family Court was justified in treating the civil and criminal aspects separately. The appellant/husband alleged that the Family Court ignored his written arguments. However, no material omission has been demonstrated that would alter the outcome. The Trial Court's decision was based on evidence and legal principles, not procedural oversight.

9. The learned counsel for the appellant/husband submits that there are discrepancies in the wife's claims regarding stolen jewels (24 grams vs. 15 sovereigns). While inconsistencies exist, we are of the view that they do not invalidate her core assertion that certain jewels and cash were unlawfully



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taken. The Family Court's reliance on her complaint was not misplaced.

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10. In Cross Objection No 32 of 2019, the cross-objector/wife would submit that Section 27 does not exclude money/cash from its scope. To support her argument, reliance taken from ***Hemant Kumar Agrahari &Anr vs Lakshmi Devi &Anr 2004 AIR (Allahabad) 126***. In the said decision, it is seen that matter from the Bombay High Court was taken in appeal to the Supreme Court. It was partly overruled in ***Balkrishna R. Kadam v. Sangeeta B. Kadam, AIR 1997 Supreme Court 3562 : (1997) 7 SCC 500*** (The Balkrishna case). The Supreme Court held:-

"It (Section 27 of the Act) includes the property given to the parties before or after marriage also, so long as it is relatable to the marriage. The expression 'at or about the time of marriage' has to be properly construed to include such property which is given at the time of marriage as also the property given before or after marriage to the parties to become their 'joint property', implying thereby that the property can be traced to have connection with the marriage. All such property is covered by Section 27 of the Act".



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11. In the light of the above decision, the Family Court is competent to order the return of both property and money. The cross objector/wife submits that the appellant/husband's subsequent filing of I.A.No.5758 of 2018 was an afterthought, undermining his credibility. The cross objector/wife should not be compelled to re-litigate the same issue in another court. The Family Court's decree for the return of her jewels and money was just and proper, and there is no need for further proceedings.

12. Section 27 uses the phrase 'property presented at the time of marriage, which may belong jointly to both the husband and the wife'. This section has one prerequisite as laid down in the Balkrishna case. The property must be connected with the marriage. So far as the question of property being jointly owned by the parties is concerned, suffice to say that the Section nowhere uses mandatory word 'must' as being suggested by the counsel of the husband; it uses the word 'may'. The phrase 'which may belong jointly' because of the use of the word 'may' includes within it penumbra the property which may not belong jointly to the parties. In our opinion, Section 27 of the Act does not confine or restrict the jurisdiction of matrimonial Courts to deal only with the joint property of the parties, which is presented at or about the time of marriage but also permits disposal of exclusive property of the parties provided they were presented at or about the time of marriage.



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13. After carefully considering the submissions, evidence, and material on record,

i) This court finds no merit in the appeals filed by both parties. The trial court's judgment dated **09.01.2019** in **O.P.No.2375 of 2018** and the related interlocutory applications in **I.A.No.5412 of 2018** and **I.A.No.5758 of 2018** were based on a thorough evaluation of the facts, legal provisions, and the credibility of the witnesses. The appellant/wife failed to substantiate her allegations of fabrication and misrepresentation by the respondent/husband, while the respondent/husband's appeals against the return of jewels lack legal and factual foundation.

ii) The trial court rightly granted divorce on grounds of cruelty, as established by the respondent/husband, and correctly ordered the return of the wife's jewels under **Section 27 of the Hindu Marriage Act**, while leaving the claim for cash to be pursued separately. The cross-objection filed by the wife seeking enforcement of the decree is **dismissed**, as the Family Court's findings on the return of jewels were just and proper.



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iii) Consequently, **CMA.No.3375 of 2019** (wife's appeal against divorce), **CMA.No.2212 of 2019** and **CMA.No.2213 of 2019** (husband's appeals against return of jewels) are **dismissed**, and the judgment and decree of the Principal Family Court, Chennai, are **confirmed**. No costs.

[J.N.B.,J.]

[R.S.V.,J.]

19.11.2024

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To

- 1.The learned Principal Judge, Family Court, Chennai.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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