



C.M.S.A.No.22 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Judgment Reserved on</i> 01.08.2023	<i>Judgement Delivered on</i> 07.03.2024
--	--

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.S.A.No.22 of 2017

Sudha

.. Appellant

Vs.

Sanjeevi

.. Respondents

Civil Miscellaneous Second Appeal filed under Section 100 of the Code of Civil Procedure, against the judgment and decree dated 13.06.2017, in C.M.A.No.12 of 2012 on the file of the District and Sessions Court, Tiruvannamalai, confirming the fair and final order dated 01.08.2012 in H.M.O.P.No.107 of 2000 on the file of the Principal Subordinate Court, Tiruvannamalai.

For appellant : M/s.J.Prithivi

For respondent : Mr.V.Prakash Babu

JUDGMENT

The appellant herein is wife and the respondent herein is her husband.

2. The respondent has filed petition for divorce in H.M.O.P.No.107 of 2009 on the file of the Principal Subordinate Court, Tiruvannamalai. After enquiry, the learned Principal Subordinate Judge granted divorce against the wife.

Page No.1/20



C.M.S.A.No.22 of 2017

Challenging the same, the appellant/wife filed an appeal before the District Court, Tiruvannamalai in C.M.A.No.12 of 2012. The learned District Judge, after hearing the appeal, dismissed the same, confirming the order of divorce granted by the trial Court. As against the judgment rendered in C.M.A.No.12 of 2012 by the first appellate Court, the present C.M.S.A. is filed by the wife.

3. In the Memorandum of Grounds of Appeal, the learned counsel for the appellant raised the following substantial questions of law:

(i) Whether the respondent/husband had discharged his initial burden of proving that the appellant/wife had inflicted mental cruelty on the husband and her separation was voluntary, as contemplated under Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act ?

(ii) Whether both the Courts below were right in holding that allegations of adultery in counter statement of wife, per-se, inflicts mental cruelty ?

(iii) Whether the lower Court is right in holding that acquittal in criminal proceedings initiated by wife against husband, is a ground for divorce, when the proof required for criminal proceedings is "beyond reasonable doubt", and contrary to civil proceedings ?

(iv) Whether the Courts below are right in granting a decree for divorce on the ground of irretrievable break-down of marriage without any statutory sanctions ?



C.M.S.A.No.22 of 2017

WEB COPY

4. Though on the earlier occasion, this Court has not formulated any substantial question of law, however, after hearing the arguments and on a perusal of the records, including the grounds of the present appeal, this Court now formulates the above said four substantial questions of law for deciding this appeal, as extracted supra.

5. The case of the respondent-husband is that their marriage was solemnized on 24.10.2005 and the appellant was living with the respondent only for a short while. She left the matrimonial home without any valid reasons. Therefore, the respondent filed a petition for restitution of conjugal rights in H.M.O.P.No.31 of 2007 before the learned Subordinate Judge, Tiruvannamalai, and the petition was pending and due to intervention of Panchayatdars, the appellant agreed to live with the respondent/husband and he took the appellant and hence, he withdrew H.M.O.P.No.31 of 2007 for restitution of conjugal rights. Thereafter, within a day, she again left the matrimonial home without any valid reason from the respondent/husband and from the date of marriage, she was not interested to live with the husband and she frequently left the matrimonial home and moved to her parental house and she also never gave respect to his parents. Therefore, the appellant/wife filed a petition in H.M.O.P.No.107 of 2009 for divorce.

Page No.3/20



C.M.S.A.No.22 of 2017

6. It is the further case of the respondent that the appellant/wife gave a complaint against the respondent/husband for demand of dowry and also physical and mental cruelty, to the Police and also made allegation that the respondent/husband is leading adulterous life and the appellant/wife is also not interested to live with her, as she caused mental cruelty. Both the trial Court and the first appellate Court, rightly appreciated the evidence and granted divorce. Hence, there is no merit in the appeal. In support of his submissions, the learned counsel for the respondent relied on the following decisions:

(i) 2013 (5) SCC 226 (K.Srinivas Rao Vs. D.A.Deepa):

"30. It is also to be noted that the appellant husband and the respondent wife are staying apart from 27-4-1999. Thus, they are living separately for more than ten years. This separation has created an unbridgeable distance between the two. As held in *Samar Ghosh* [(2007) 4 SCC 511] , if we refuse to sever the tie, it may lead to mental cruelty.

31. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree.

32. In *V.Bhagat* [(1994) 1 SCC 337] this Court noted that divorce petition was pending for eight years and a good part of the lives of both the parties had been consumed in litigation, yet the end was not in sight. The facts were such that there was no question of reunion, the marriage having irretrievably broken down. While dissolving the marriage on the ground of mental cruelty this Court observed that: (SCC p. 351, para 21)



WEB COPY



C.M.S.A.No.22 of 2017

"21. ... Irretrievable breakdown of the marriage is not a ground by itself. But, while scrutinising the evidence on record to determine whether the ground(s) alleged is/are made out and in determining the relief to be granted, the said circumstance can certainly be borne in mind."

33. In *Naveen Kohli* [(2006) 4 SCC 558] , where the husband and wife had been living separately for more than 10 years and a large number of criminal proceedings had been initiated by the wife against the husband, this Court observed that: (SCC p. 582, para 86)

"86. ... The marriage has been wrecked beyond the hope of salvage [and] public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto."

It is important to note that in *Naveen Kohli case* [(2006) 4 SCC 558] this Court made a recommendation to the Union of India that the Hindu Marriage Act, 1955 be amended to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce.

34. In the ultimate analysis, we hold that the respondent wife has caused by her conduct mental cruelty to the appellant husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court the respondent wife expressed that she wants to go back to the appellant husband, but, that is not possible now. The appellant husband is not willing to take her back. Even if we refuse decree of divorce to the appellant husband, there are hardly any chances of the respondent wife leading a happy life with the appellant husband because a lot of bitterness is created by the conduct of the respondent wife.

35. In *Vijaykumar* [(2003) 6 SCC 334] , it was submitted that if the decree of divorce is set aside, there may be fresh avenues and scope for reconciliation between parties. This Court observed that judged in the background of all surrounding circumstances, the claim appeared to be too desolate, merely born out of despair rather than based upon any real, concrete or genuine purpose or aim. In the facts of this case we feel the same."

(ii) 2017 SCC Online Madras 24056 (Dr.Manimaran Vs. Dr.Nalini) :

"21. In the present case, the nature and magnitude of the



WEB COPY



C.M.S.A.No.22 of 2017

allegations made in the complaint given by the respondent under Ex.P4 are serious in nature. During cross-examination of the respondent, she has admitted that she has no knowledge about the contents of the complaint, Ex.P4 as it was only prepared by her father and paternal uncle and she merely signed it. Before the Family Court, when the respondent was examined, she admitted that most of the allegations made in the complaint, Ex.P4 are not correct. On the other hand, when the appellant has filed Criminal OP No. 7734 of 2013 before this Court seeking anticipatory bail apprehending arrest in Crime No. 1 of 2013 on the file of Inspector of Police, All Women Police Station, Ayanavaram, the respondent has filed MP No. 1 of 2013 seeking to permit her to intervene in the case so as to enable her to file her objection for grant of anticipatory bail. On the one hand, the respondent states that the complaint under Ex.R4 was given out of an emotional outburst to save her matrimonial life. On the other hand, the respondent has filed MP No. 1 of 2013 objecting to the grant of anticipatory bail in favour of the appellant/husband. Further, as mentioned above, the respondent is not a laywoman or an illiterate. She is a Doctor by profession and definitely, she is fully aware of the consequences that may flow out of the unceremonious manner in which she has given the complaint falsely against the appellant husband and the impact it may have in continuing her matrimonial life. We also find that even according to the respondent, after receipt of the notice in the Petition filed by the appellant for dissolution of marriage, she has filed the Original Petition under Section 9 of the Restitution of Conjugal rights in OP No. 3964 of 2012. However, in OP No. 3964 of 2012, the respondent did not make any averment as to the complaint given by her under Ex.P4 against the appellant or the contents contained therein. Thus, the contents contained under Ex.P4 are held to be not true and it is an after-thought of the respondent to humiliate and harass the appellant. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of (K. Srinivas vs. K. Sunita) reported in (2014) 16 Supreme Court Cases 34, which was relied on by the learned Senior counsel for the appellant, wherein, in identical case, the Honourable Supreme Court held that the respondent-wife in her cross-examination has admitted that she did not mention all the incidents on which her complaint is predicated in her statement under Section 161 of Cr.P.C and therefore the criminal complaint given by the respondent is an after-thought. In Para Nos. 5 to 7 of this decision, it was held as follows:-

"5. The respondent wife has admitted in her cross-examination that she did not mention all the incidents on which her complaint is predicated in her statement under Section 161 Cr.P.C. It is not her case that she had actually narrated all these facts to the investigating officer, but that he had neglected to mention them. This, it seems to us, is clearly indicative of the fact that the criminal complaint was



WEB COPY



C.M.S.A.No.22 of 2017

a contrived. We affirm the view of the High Court that the criminal complaint was "ill advised". Adding thereto is the factor that the High Court had been informed of the acquittal of the appellant husband and members of his family. In these circumstances, the High Court ought to have concluded that the respondent wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 13 (1) (i-a) of the Hindu Marriage Act.

6. Another argument which has been articulated on behalf of the learned counsel for the respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was led, as also when arguments were addressed, objection had not been raised on behalf of the respondent wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.

7. In these circumstances, we find that the appeal is well founded and deserves to be allowed. We unequivocally find that the respondent wife had filed a false criminal complaint and even one such complaint is sufficient to constitute matrimonial cruelty."

7. The case of the appellant/wife is that, out of their wed-lock, they have been blessed with one son. The respondent/husband received the jewels of the appellant/wife and she did not come back and further, he led an adulterous life and is also a drunkard. Further, he caused mental cruelty and when she had also questioned it, he caused physical cruelty also. Therefore, she left the matrimonial home and the respondent/husband filed petition for restitution of conjugal rights and also his willingness to live with her for some time and then, once again, the

Page No.7/20



C.M.S.A.No.22 of 2017

respondent/husband caused mental as well as physical cruelty and attacked the appellant and also caused injuries. She left the matrimonial home with reasonable cause and thereafter, the respondent filed the present H.M.O.P. by suppressing all the facts and hence, the respondent is not entitled for divorce on the alleged ground that he has not proved the grounds for divorce. Both the trial Court as well as the first appellate Court failed to appreciate the pleadings and oral and documentary evidence and both the Courts, beyond the pleadings and evidence, granted divorce, which is only against the statutory principles. The respondent/husband has not proved the grounds and the allegations raised in the divorce petition and he has also not proved by examining any independent witness and reliable evidence. Further, P.W.2, during cross-examination, had stated that he does not know anything and he is not directly aware about that in respect of the allegations levelled in the petition. Therefore, both the Courts below failed to appreciate the evidence and granted divorce against the principles of settled law. Therefore, the appellant/wife has filed the present appeal raising the four substantial questions of law as stated supra.

8. Learned counsel for the appellant/wife, placed reliance on the following judgments in support of his submissions and the relevant portion of the same reads as follows:

Page No.8/20



WEB COPY

(i) 2020 (3) SCC 786 (Mangayakarasi Vs.M.Yuvaraj):

"13. Be that as it may, though the subsequent petition was filed by the husband in HMOP No. 13 of 2010 which was originally numbered as HMOP No. 532 of 2007, the same was also filed on the same set of allegations. Further, at that point in time, the wife had also filed a petition under Section 9 of the Hindu Marriage Act. In that background, though subsequently in the proceedings before the trial court a reference is made to the criminal proceedings, as on the date when the cause of action had arisen for the husband who initiated the proceedings seeking dissolution of the marriage, the criminal case filed against him was not the basis whereby a ground was raised of causing mental cruelty by filing such criminal complaint. If that be the position, a situation which was not the basis for initiating the petition for dissolution of marriage and when that was also not an issue before the trial court so as to tender evidence and a decision be taken, the High Court was not justified in raising the same as a substantial question of law and arriving at its conclusion in that regard. A perusal of the judgment [*M. Yuvaraj v. Mangayarkarasi*, 2018 SCC OnLine Mad 13523] of the High Court indicates that there is no reference whatsoever with regard to the evidence based on which the dissolution of marriage had been sought, which had been declined by the trial court and the first appellate court and whether such consideration had raised any substantial question of law. But the entire consideration has been by placing reliance on the judgment which was rendered in the criminal proceedings and had granted the dissolution of the marriage. The tenor of the substantial questions of law as framed in the instant case and decision taken on that basis, if approved, it would lead to a situation that in every case if a criminal case is filed by one of the parties to the marriage and the acquittal therein would have to be automatically treated as a ground for granting divorce which will be against the statutory provision.

14. It cannot be in doubt that in an appropriate case the unsubstantiated allegation of dowry demand or such other allegation has been made and the husband and his family members are exposed to criminal litigation and ultimately if it is found that such allegation is unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege that mental cruelty has been inflicted on him, certainly, in such circumstance, if a petition for dissolution of marriage is filed on that ground and



WEB COPY



C.M.S.A.No.22 of 2017

evidence is tendered before the original court to allege mental cruelty it could well be appreciated for the purpose of dissolving the marriage on that ground. However, in the present facts as already indicated, the situation is not so. Though a criminal complaint had been lodged by the wife and husband has been acquitted in the said proceedings the basis on which the husband had approached the trial court is not of alleging mental cruelty in that regard but with regard to her intemperate behaviour regarding which both the courts below on appreciation of the evidence had arrived at the conclusion that the same was not proved. In that background, if the judgment [*M. Yuvaraj v. Mangayarkarasi*, 2018 SCC OnLine Mad 13523] of the High Court is taken into consideration, we are of the opinion that the High Court was not justified in its conclusion.

15. The learned counsel for the respondent, however, contended that ever since the year 2007 the parties have been litigating and were living separately. In that situation it is contended that the marriage is irretrievably broken down and, therefore, the dissolution as granted by the High Court is to be sustained. The learned counsel has relied on the decisions in *Naveen Kohli v. Neelu Kohli* [*Naveen Kohli v. Neelu Kohli*, (2006) 4 SCC 558] , in *Sanghamitra Ghosh v. Kajal Kumar Ghosh* [*Sanghamitra Ghosh v. Kajal Kumar Ghosh*, (2007) 2 SCC 220] and in *Samar Ghosh v. Jaya Ghosh* [*Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511] to contend that in cases where there has been a long period of continuous separation and the marriage becomes a fiction it would be appropriate to dissolve such marriage. On the position of law enunciated, it would not be necessary to advert in detail inasmuch as the decision to dissolve the marriage apart from the grounds available, will have to be taken on case-to-case basis and there cannot be a straitjacket formula. This Court can in any event exercise the power under Article 142 of the Constitution of India in appropriate cases. However, in the instant facts, having given our thoughtful consideration to that aspect we notice that the parties hail from a conservative background where divorce is considered a taboo and further they have a female child born on 3-1-2007 who is presently aged about 13 years. In a matter where the differences between the parties are not of such magnitude and is in the nature of the usual wear and tear of marital life, the future of the child and her marital prospects are also to be kept in view, and in such circumstance the dissolution of marriage merely because they have been litigating and they have been residing separately



WEB COPY



C.M.S.A.No.22 of 2017

for quite some time would not be justified in the present facts, more particularly when the restitution of conjugal rights was also considered simultaneously."

(ii) 2020 (3) CTC 799 (Madras High Court) (A.R.Indira Vs. N.Kadappan) :

"20. From a reading of the pleadings, it is clearly evident that the only ground on, which the Respondent/Husband is seeking for Divorce on the ground of cruelty is the Letter addressed by the Appellant/Wife to his superiors, which has been marked as Ex.B4. From a reading of Ex.B4, it is seen that the Appellant/Wife has made an allegation primarily against her in laws and stated that her husband has very passive, which has caused a great deal of pain to her. Further, even after the issuance of said Letter, the husband was ready to take back his wife, which would clearly indicate that he had condoned the act of cruelty. Once the person has condoned the act of cruelty, then the Petition for Divorce on the ground of cruelty will automatically fail."

(iii) 2008 (2) CTC 745 (Madras High Court) (Chenthilkumar.C.R. Vs.K.Sutha):

"63. The non-filing of Criminal Complaint as against the husband, certainly in the facts and circumstances of the case, would speak in support of the wife that she wanted to resume cohabitation with him. The matrimonial Courts now-a-days come across in majority of the cases, the wife sets the criminal law in motion, but in this case, she has not done so. In fact, that itself speaks about her genuine intention to resume cohabitation and such a fact cannot be lost sight of.

64. The Trial Court's reasoning that since the wife has not filed the Petition for restitution of conjugal rights, would speak volumes about her unwillingness to resume cohabitation. To say the least, it is a wrong approach of the Trial Court relating to the non-filing of the Application for restitution of conjugal rights under Section 9 of the Hindu Marriage Act (the Trial Court erroneously understood as though Section 11 of the Act is for restitution conjugal rights).

65. There is no hard and fast rule that to express a spouse's intention to resume cohabitation, there should be an Application for restitution conjugal rights. In the counter itself, she has categorically set out that she intended to resume



C.M.S.A.No.22 of 2017

cohabitation with the husband.

66. In fact, Section 23-A of the Hindu Marriage Act also would contemplate that no separate Petition is required and the prayer of the respondent/wife could be set out in the counter. No doubt, the wife has not set it out as counter claim, but she clearly spelt out her mind in the counter as well as in the earlier reply notice that she wants to resume cohabitation with the husband."

(iv) 2001 (2) CTC 690 (SC) (Chetan Dass Vs.Kamala Devi):

"21. In this case, the averments made in the petition for obtaining a decree for divorce, namely, desertion on the part of the wife without any reasonable cause have not been found to be correct. The petition was liable to be dismissed on that ground alone. The defence of the respondent for having a justified reason to live away from the husband has been found to be correct. Behaviour of the appellant certainly falls in the category of misconduct on his part. In such circumstances, it is too much on his part to claim that he be given the advantage of his own wrong and be granted a decree of divorce on the ground of desertion on the part of his wife who is still prepared to live with him provided he snaps his relationship with the other woman. Similar offer had also been made on behalf of the appellant, which, we have already dealt in the earlier part in the judgment. He perhaps prefers to snap relationship with the respondent rather than with Sosamma Thomas. A decree of divorce on the ground of marriage having been irretrievably broken cannot be granted in the facts and circumstances of the case as indicated above."

9. First substantial question of law: (i) Whether the respondent/husband had discharged his initial burden of proving that the appellant/wife had inflicted mental cruelty on the husband and her separation was voluntary as contemplated under Sections 13(1)(ia) and 13(1)(ib) of the Hindu Marriage Act ?

The respondent himself admitted that originally, he filed a petition for

Page No.12/20



C.M.S.A.No.22 of 2017

restitution of conjugal rights in H.M.O.P.No.31 of 2007 on the file of the Principal Subordinate Judge, Tiruvannamalai and the same was also marked as Ex.P-1 and the same was subsequently withdrawn by the respondent-husband, and thereafter, he took the appellant and they lived together for some time in the matrimonial home. Therefore, when once he withdrew the application for restitution of conjugal rights and lived together with the appellant, whatever the allegations made by the respondent in the said H.M.O.P., were given up by the respondent. Subsequently, the respondent has filed the present H.M.O.P.No.107 of 2009, being the subject matter of the present appeal for divorce on the ground of desertion and cruelty. The desertion was not proved, and if a person files a divorce petition on the ground of cruelty, there must be a separation for minimum two years and the respondent/husband has not proved the same. However, both the Courts below granted divorce on the ground of cruelty and the appellant/wife filed a criminal complaint and the criminal case ended in acquittal and she has also made allegation of adultery, but that was not proved and she had also voluntarily left the matrimonial home, and therefore, there was separation and the divorce was granted.

10. The respondent/husband has reiterated the allegations levelled in the divorce petition by way of proof affidavit/chief examination. But, in the cross-



C.M.S.A.No.22 of 2017

examination, he has stated otherwise and he was examined as P.W.2, but he has not stated anything about it and he has stated that he has no personal knowledge about any of the allegations. Though in the matrimonial home, there was dispute between the spouses, but most of the allegations are only within the four-walls. One of the main allegation given by the respondent/husband is that she never gave respect to his parents and frequently she left the matrimonial home to the parental house, without any valid reasons. In order to prove the same, the respondent neither examined his parents, nor the Panchayatdars or any person who is well-versed about the family affairs of the respondent. Therefore, the respondent has not proved the allegations and he has not substantiated the allegations by examining any independent witness/evidence. Both the Courts below only relied on the complaint and criminal case and it has nothing to do with the allegations. Therefore, in this case, the said reasons have not been mentioned in the grounds of divorce, i.e. the averments made in the petition for divorce, and therefore, a person who filed a petition under Sections 13(1)(ia) and 13(i)(ib) of the Hindu Marriage Act has to prove that the desertion was for more than the statutory period, that too without any valid reason, the spouse got separated from the matrimonial home. Otherwise, they have to prove the cruelty in the manner known to law, whereas, the evidence let in by the respondent is not sufficient and both the Courts below failed to appreciate the



C.M.S.A.No.22 of 2017

evidence of not only the respondent, but also the appellant. The appellant examined not only herself, but also examined her father and she has substantiated her allegations/averments made in the counter affidavit filed by the husband before the Court below in H.M.O.P.No.107 of 2009. Therefore, appreciation of evidence by the trial Court and re-appreciation of evidence by the first appellate Court, are perverse and hence, the first substantial question of law is answered against the respondent/husband and in favour of the appellant/wife.

11. Second substantial question of law: Whether both the Courts below were right in holding that allegations of adultery in counter statement of wife per-se inflicts mental cruelty ?

The first appellate Court and the trial Court mainly granted divorce and the appellant/wife made allegations in her counter statement that the respondent was leading adulterous life and that was not proved, but the allegations mentioned in the counter statement relate to mental cruelty. Though the proof of adultery is not that much easy, but the respondent has not stated in his petition for divorce that the wife has given false propaganda regarding adultery. The appellant examined herself as D.W.1 and she has examined her father who has stated the same. But however, mere allegations mentioned in the counter affidavit may not be the sole ground for mental cruelty. However, in this



C.M.S.A.No.22 of 2017

case, the husband has not pleaded in the grounds for divorce that the appellant/wife caused mental cruelty by making false propaganda. However, he made an allegation that the appellant/wife left the matrimonial house without any valid reason. Therefore, in order to justify her reason for leaving the matrimonial home, she has pleaded the same. As stated by the learned counsel for the appellant/wife, mere making allegations in the counter statement, per-se, will not be a mental cruelty. The second substantial question of law is answered accordingly.

12. Third substantial question of law: Whether the lower Court is right in holding that acquittal in criminal proceedings initiated by wife against husband, is a ground for divorce, when the proof required for criminal proceedings is "beyond reasonable doubt", and contrary to civil proceedings ?

One of the reasons given by both the Courts below is that the wife has given the criminal complaint against the husband, and it had ended in acquittal, and therefore, it is a ground for cruelty. The appellant has tendered evidence that the husband physically assaulted the wife and based on that, she has given a complaint that he demanded dowry. Though the criminal case was registered, but subsequently, it ended in acquittal on the ground of "benefit of doubt", i.e., the prosecution has not proved its case beyond reasonable doubt. Therefore, he was acquitted and it is known fact that if the wife gave the complaint against her

Page No.16/20



C.M.S.A.No.22 of 2017

husband, then the investigating agency has to take every step to collect materials and produce the same before the Court and the prosecution has to prove it in the manner known to law. The victim/wife only gave a complaint before the Police and it is for the prosecution to prove the case beyond reasonable doubt. In any event, the case ended in acquittal of the husband on the ground of extending the benefit of doubt, for which, the wife cannot be found fault with, and therefore, merely because the criminal case lodged by the wife ended in acquittal on the ground of benefit of doubt, that may not be a ground for cruelty caused by the wife, and therefore, the reasons stated by both the Courts below are not appreciable. Both the Courts below have not properly appreciated the evidence. Therefore, the reasons given for divorce on that ground, is also not acceptable. The third substantial question of law is answered accordingly.

13. Fourth substantial question of law: (iv) Whether the Courts below are right in granting a decree for divorce on the ground of irretrievable break-down of marriage without any statutory sanctions ?

In this case, though the trial Court has not stated about the irretrievable break-down of marriage, however, the first appellate Court took it as one of the stand for granting divorce, but there is no statutory provision in that regard. The

Page No.17/20



C.M.S.A.No.22 of 2017

Supreme Court only by invoking Article 142 of the Constitution of India, will consider the materials and grant divorce on the ground of irretrievable break-down of marriage between the spouses. Since there is no statutory provision, neither the trial Court, nor the first appellate Court can grant divorce on the ground of irretrievable break-down of marriage. The fourth substantial question of law is answered accordingly.

14. Therefore, as contended by the learned counsel for the appellant, both the Courts below failed to appreciate and re-appreciate the evidence and the findings of the Courts below are perverse and since all the substantial questions of law are answered in favour of the appellant/wife and against the respondent/husband, this Court finds that the reasons given for divorce by both the Courts below are not correct and therefore, the divorce granted by the trial Court and confirmed by the first appellate Court, are set aside.

15. As the facts in the present case are distinguishable to the facts in the decisions relied on by the learned counsel for the respondent/husband, the same are not discussed hereunder.

16. Moreover, the decisions relied on by the learned counsel for the



C.M.S.A.No.22 of 2017

appellant/wife are squarely applicable to the facts in the present case on hand.

WEB COPY

17. For all the reasons stated above, the present appeal is allowed. There shall be no order as to costs.

07.03.2024

Index: Yes/no
Speaking Order: Yes/no
Neutral Citation: Yes/no
CS

To

1. The District and Sessions Judge, Tiruvannamalai.
2. The Principal Sub-Judge, Tiruvannamalai.
3. The Section Officer, V.R. Section, High Court, Madras.

Page No.19/20



WEB COPY



C.M.S.A.No.22 of 2017

P.VELMURUGAN, J

CS

Pre-delivery Judgment in

C.M.S.A.No.22 of 2017

07.03.2024

Page No.20/20