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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:11.07.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.S.A(MD)Nos.18 & 19 of 2012

M. Chandrapriya

... Appellant in both the
CMSA

Vs.

R.Sridar

... Respondent in both the
CMSA

COMMON PRAYER: Civil Miscellaneous Second Appeals are filed under Section 28 of Hindu Marriage Act & Section 100 of Civil Procedure Code, to set aside the Judgment and Decree passed by the Learned Principal District Judge, Dindigul in C.M.A.Nos.19 & 20 of 2011 dated 09.04.2012 in confirming the Judgment and Decree passed by the Learned Principal Subordinate Judge, Dindigul, in H.M.O.P. No.263 & 289 of 2008 dated 20.04.2011.

In both the CMSAs

For Appellant : Mr.D.Selvaraj

For Respondent : M/s.T.R.Jeyapalam



COMMON JUDGEMENT

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These Civil Miscellaneous Second Appeals are filed to set aside the Judgment and Decree passed by the Principal District Judge, Dindigul in C.M.A.Nos.19 & 20 of 2011 dated 09.04.2012, confirming the Judgment and Decree passed by the Principal Sub Court, Dindigul, in H.M.O.P. No.263 & 289 of 2008 dated 20.04.2011.

2. The Husband has filed the petition in H.M.O.P. No.263 of 2008 seeking divorce and the wife had filed the petition in H.M.O.P. No.289 of 2008 for Restitution of Conjugal rights. The said divorce petition in H.M.O.P.No.263 of 2008 was allowed and the H.M.O.P. No.289 of 2008 was dismissed. Against said findings, the wife has preferred appeals in C.M.A.(MD)Nos.19 & 20 of 2011. The Appellate Court has dismissed both the Appeals. Aggrieved over the same, the wife had preferred these Civil Miscellaneous Second Appeals. For the sake of convenience, the parties are referred as petitioner husband and respondent wife.

3. The brief facts of the case are that the marriage between the petitioner husband and the respondent wife was solemnised on 22.10.2007. The respondent wife was presented with 36 sovereign gold jewellery by her parents



and the petitioner husband side had also presented 23 sovereign gold jewellery to the respondent wife. The marriage expenses were borne by both the petitioner side and respondent side equally. After marriage both lived in petitioner husband place along with petitioner husband's parents. The petitioner was working in a partnership firm in which the petitioner's mother Prabhavati was partner and receiving salary for the same. The petitioner husband did not complete graduation and the respondent wife is a graduate. After few days of marriage, the respondent wife had suddenly changed her attitude towards the petitioner husband and his parents. The respondent wife demanded separate matrimonial home (thanikudithanam). The petitioner husband stated the present home in which the petitioner was residing jointly with the parents was owned by the petitioner as well as his mother. The mother had put up construction out of her own income from the partnership business and out of love affection towards the petitioner, the mother has constructed the house in the name of the petitioner. When the respondent wife's demand for separate matrimonial home was not heeded to, the respondent wife had created problems to the petitioner and behaved in a worst manner towards the petitioner and his parents. The petitioner's sister is residing with her husband in a separate matrimonial home at Lalgudi, but the respondent wife used to unnecessarily shout at petitioner's sister in filthy language. Due to the act of the respondent wife, the petitioner



husband had suffered both mentally and physically. Further the respondent wife always shouted unnecessarily and use unparliamentary words against the petitioner and for no fault of the petitioner.

4. Further the respondent wife insisted to sell the house and give the petitioner husband share to her and due to this demand, the petitioner and her mother had recently transferred the house property to the name of the petitioner's father. The respondent wife informed she is not accustomed to live with the parents of the petitioner husband as joint family and also insisted the petitioner husband to settle at Dindigul, where the respondent wife parents reside. In order to achieve this goal, the respondent wife continuously torture the petitioner and always threatened the petitioner and his parents, if the demand is not fulfilled the respondent wife would prefer false complaint under Dowry Prohibition Act and sent the petitioner and the entire family behind bars. On 20.04.2008 the respondent wife's mother came to the matrimonial home, instead of advising her daughter, she threatened the petitioner that unless he accedes to the demands of the respondent wife, they would lodge false complaint under Dowry Prohibition Act and sent the entire family, including the petitioner's sister and her family behind bars. On 01.05.2008, the maternal grandfather and maternal grandmother with some other relatives of the



retain the petitioner husband at Dindigul and they would never allow the petitioner to leave Dindigul. Because of such threatening from the respondent, the petitioner was very much afraid to go to the house of the respondent, thereby mentally suffers a lot even without seeing his new born baby.

6. The petitioner belongs to a respectable family. Based on the nature of his job and the business in the name of his mother, the petitioner had secured a good position and status in the society. The continuous teasing and threatening by the wife and her family, the petitioner husband was forced to think of committing suicide. The petitioner feels that if the relationship of the husband and wife continues between them, the respondent and his family would affect the petitioner's future. The petitioner in his tender age along with his family had suffered monetarily and now has come to a good position because of the hard work and dedication. The respondent and her family would humiliate the petitioner and the respondent would be separated from his parents. The demands and the threats of the respondent wife and her family members are unreasonable and the same would amount to mental cruelty. Hence, the petitioner's apprehension that it will be detrimental to the petitioner husband to continue in the matrimonial relation with the respondent wife. Therefore, petitioner husband was forced to prefer for dissolution of marriage.



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7. The respondent wife had filed counter admitting the marriage between the parties. However, submitted that the parents of the respondent wife had given 36 sovereign of gold ornaments and Rs.50,000 in cash and Rs.70,000 worth of house old articles as dowry. After the marriage the petitioner and the respondent lived together happily for a short while at Karur, the native place of husband along with his parents. Thereafter the parents of the husband and his elder sister Poongodi torture the petitioner demanding additional dowry. The wife's father had incurred loss in his business and hence the respondent wife tolerated the dowry torture of the petitioner and his parents. In the meanwhile, the wife became pregnant and on 14.07.2008 valaikappu was conducted at Karur, the native place of the husband by the respondent wife's parents along with the family members of the husband family. Thereafter the wife was taken back to Dindigul, the native place of the respondent wife. On 21.07.2008, the petitioner husband came to Dindigul to meet the respondent wife and during the meeting the petitioner husband informed about the dissatisfaction of his parents, since the during valaikappu, the wife's parents had not presented any valuables to the parents of the husband. Subsequently the petitioner husband demanded dowry of 2 sovereign of gold bangle, five sovereign of gold necklace and silver bangle to live with her husband after the birth of the child, otherwise, the respondent wife would be left at her parent's house.



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8. In such circumstances on 01.10.2008, a female baby was born to the wife and the birth of the baby was informed to the petitioner and his family, but they did not visit the baby. Thereafter the parents of the respondent wife had arranged for a ceremony to the new born baby and the petitioner and his family were informed about the ceremony. On 30.10.2008 the petitioner husband and the family members of the petitioner came to Dindigul to attend the ceremony but they never care for the child nor the wife, but threatened the wife and wife's parents that unless the dowry demands are fulfilled, they will not take back the wife and the newly born baby. And also threatened if the demand of dowry was not fulfilled within short period, the petitioner husband would divorce the respondent wife. The petitioner husband without any reasons is neglecting the respondent wife and hence the respondent wife has filed HMOP for restitution of conjugal rights. Therefore, the respondent prayed to dismiss the divorce application and allow the restitution of conjugal rights.

9. The present Civil Miscellaneous Second Appeals are admitted following substantial questions of Law:

- (i) When the criminal case is pending before the Criminal Court whether the Civil Court can exceed its limits and jurisdiction and interfere in the jurisdiction of the Criminal Court?
- (ii) Whether subsequent events to constitute cruelty?



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(iii) Whether mere filing of criminal case after the relationship between husband wife strained amounts to cruelty?

(iv) Whether apprehension amounts to cruelty?

10. The contention of the husband that he is the only son for his parents and he had to take care of his parents, hence he was living with his parents. The wife after three months of marriage was insisting to have separate matrimonial home (thanikudithanam), when the same was declined, the wife started misbehaving with the husband's parents and husband's sister. Even though the husband's sister is living at Lalgudi, the wife will talk ill of the husband's sister. The husband tried to convince the wife and stated that he being the only son, it is his duty to live with the parents in order to take care of the parents, but the wife did not heed to the explanation of the husband. Further the wife started disrespecting the husband's parents and also husband's family was threatened by the wife's family with dire consequences, which pushed the husband to mental disturbance. The wife had filed a police complaint under dowry harassment case against the petitioner, his parents and his sister. This complaint had caused the sister and her husband to get bail from the Madras High Court, Madurai Bench and further this had caused disturbance in the sister's family and further caused mental agony to the petitioner.



11. The wife had denied the allegation that she was demanding to establish separate matrimonial home (thanikudithanam). But it is seen that the same is only a bare denial. When the husband had mentioned the dates of the demand and the threat of dire consequences from her parents, grandparents and other relatives, there is no specific denial from the wife for the incidents of demand on such dates. Therefore, the allegation that the wife demanded separate matrimonial home (thanikudithanam) is proved. Further when the husband was the only son, separating the husband from his parents and demanding separate matrimonial home amounts to cruelty.

12. In all divorce cases whenever the husbands level allegations against the wives, the dowry harassment would be the counter allegations leveled against the husbands. In the present case also, there are allegations of dowry harassment against the husband. But it is seen that the husband had gifted 23 sovereigns of gold to the wife, which fact is admitted both in the counter and deposition by the wife. When the husband had gifted 23 sovereigns of gold to the wife, it is highly improbable that the husband had demanded 2 sovereign of gold bangle, five sovereign of gold necklace and silver bangle on 30.10.2008. Further when the husband had filed the divorce case on 16.10.2008, the husband would not have visited the wife's place on 30.10.2008,



which was just 15 days after filing of the divorce case. Therefore, prima facie it is evident that the counter allegation of dowry is 'not proved' in the present case.

13. Further it is seen that the wife had preferred complaint in Crime No.3 of 2010 against the husband and his parents, his sister alleging dowry harassment. But the said crime number was referred since after investigation the police had come to the conclusion it is false. But in order to harass the husband and his family the wife had filed protest petition, which was taken on file as C.C.No.24 of 2012 before Judicial Magistrate I, Karur. Infact the respondent wife had implicated the sister's husband after two years in the said dowry case. When the sister is living separately at Lalgudi with her husband, filing dowry harassment case against the sister is only to harass the husband. Further when the respondent wife had implicated the sister's husband in the dowry harassment case, then the vengeance attitude of the wife is evident.

14. The criminal jurisdiction needs strict evidence, but in matrimonial cases it is only preponderance of probability. Therefore, pendency of criminal case would not have any impact on the cases in family courts and



the family courts ought to independently come to conclusion about the dowry harassment. Hence the allegation of dowry can be taken independently and analyze. In the present case the criminal case is referred then the pending criminal case would not have any impact in the present case. Therefore, the first substantial question of law is answered in favour of the petitioner husband and against the respondent wife.

15. When the divorce case is pending, the wife had continued with the criminal case and had forced the husband and his family to prefer bail application. When the wife was continuing with the criminal cases when her criminal complaint was referred then the same would amount to cruelty. Therefore, this Court is of the considered opinion filing of criminal case, especially false criminal case, after the relationship between husband and wife was strained, amounts to cruelty. Further the wife had not taken any steps mend the relationship with the husband but was concentrating only on criminal cases. Hence, the subsequent events would constitute cruelty. Therefore, 2nd and 3rd substantial questions of law are held in favour of the petitioner husband and against the respondent wife.



16. It is seen that the petitioner and the respondent are married on 22.10.2007 and was separated from 16.10.2008 (the date of filing divorce petition). The parties are living separately from 16.10.2008 till date i.e. for more than 16 years. Therefore, this Court is of the considered opinion that the husband is entitled to divorce and the Trial Court and the Appellate Court are right in allowing the divorce petition and also right in dismissing the petition for restitution of conjugal rights. Consequently, both the appeals are liable to be dismissed and accordingly dismissed.

17. However, as far as maintenance is concerned, the Appellate Court has granted interim maintenance to the wife which is not paid by the husband and as per the calculation the arrears amount is Rs.6,56,000/-. The husband had already paid a sum of Rs.5,50,000/- as interim maintenance granted by the Court. The husband is directed to pay a further sum of Rs. 8,50,000/-. The same shall be paid in three equal installments. The 1st installment shall be paid on or before 12.11.2024 and the 2nd installment shall be paid on or before 12.12.2024 and the 3rd installment shall be paid on or before 04.01.2025. The girl child born to the petitioner and the respondent is doing 10th standard and the child is at liberty to approach her father for financial assistance for her higher studies.



18. Accordingly, these Civil Miscellaneous Second appeals are dismissed by confirming the orders passed by the Courts below. No Costs.

11.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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1. The Principal District Court, Dindigul.
2. The Principal Subordinate Court, Dindigul,
3. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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**Common Judgment made in
C.M.S.A(MD)Nos.18 & 19 of 2012**

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