



C.M.S.A.(MD)No.49 of 2013

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 21.03.2024

Delivered On : **19.06.2024**

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.49 of 2013

and

M.P.(MD)No.1 of 2013

Karpagavalli

... Appellant

Vs.

Mariappan

... Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 28 of Hindu Marriage Act r/w. Section 100 of Civil Procedure Code, to set aside the judgment and decree in H.M.C.M.A.No.25 of 2012 on the file of III Additional District and Sessions Court, Tirunelveli, Tirunelveli District dated 16.07.2013 reversing the judgment and decree in H.M.O.P.No.74 of 2009 on the file of the Sub Court, Sankarankovil, Tirunelveli District dated 12.04.2012.

For Appellant

: Mr.K.Prabhu

For Respondent

: Mariappan, Party-in-person

JUDGMENT

This Civil Miscellaneous Second Appeal has been filed against the judgment and decree passed in H.M.C.M.A.No.25 of 2012 on the file of III



C.M.S.A.(MD)No.49 of 2013

Additional District and Sessions Court, Tirunelveli, Tirunelveli District dated 16.07.2013 reversing the judgment and decree in H.M.O.P.No.74 of 2009 on the file of the Sub Court, Sankarankovil, Tirunelveli District dated 12.04.2012.

2.For the sake of convenience, the parties are herein after referred as per the ranking in H.M.O.P.No.74 of 2000.

3.The husband is the petitioner in H.M.O.P. and the wife Karpagavalli is the respondent therein. The petitioner has filed a petition for divorce under section 13(1)(i-a)(iii) of the Hindu Marriage Act, 1955, on the grounds of cruelty and the respondent's unsoundness of mind. The petitioner husband's case in brief:-

(I)The marriage between the petitioner and the respondent took place on 18.02.2008 at Sankarankovil according to Hindu rites and customs of the community. It was an arranged marriage. As per the custom of the community, the entire marriage expense was met by the petitioner's parents. The petitioner's parents spent more than Rs.1.5 Lakhs by way of marriage expenses. As per the custom of the community, the petitioner's parents made gold 'thali' weighing 5.5 grams for enabling the petitioner for tying 'thali' to the respondent at the time of the marriage. The respondent's father was also residing in the next street of the



C.M.S.A.(MD)No.49 of 2013

petitioner's parents' house. After marriage the petitioner and the respondent were living as husband and wife in the house of the petitioner's parents. But often the respondent used to visit her parents' house and stay there for a few days and return back.

(II) From the beginning of the marital life, the respondent was not behaving in a proper and normal manner. Often she used to sit alone for hours together with blank look and often she used to lie down in bed for hours together without sleeping in day time as well as during night. In course of time the petitioner came to know that the respondent was suffering from intermittent mental disorder. She was also not attending the house hold activities. She was also not interested in sexual life. In fact on 22.10.2008 the respondent without the knowledge of the petitioner or his family members went all alone to Eswari Nursery Home with a view to abort her pregnancy. The Lady Doctor contacted the petitioner and informed him about it. Immediately the petitioner went to Eswari Nursing Home and brought her back stating that the conception should not be aborted. Further the Respondent also had a tendency to commit suicide, obviously due to the said ailment. On 27.11.2008 the respondent went to an abandoned well about half kilo metres away from the petitioner's house and made an attempt to jump down in the well with an intention to commit suicide.



C.M.S.A.(MD)No.49 of 2013

On coming to know of the said fact through others the respondent's older sister went to the well and prevented the respondent from falling into the well and took her to her house. In the evening the petitioner and his family members were informed about this by the respondent's elder sister Muppudathi and thereafter the petitioner went to the respondent's elder sister's house and brought her back to his house. He also advised her not to commit suicide. The petitioner has informed about this to the President of Sengundar Abiviruthi Sangam, Sankarankovil on 09.01.2009. But the petitioner was bearing all these things in the interest of the family status and family life. One day, in the month of November 2003, the petitioner happened to see the respondent taking some tablets. Then the petitioner questioned her about this. Only at that time the respondent told the petitioner that she was having unsoundness of mind even prior to marriage and it was due to nervous weakness. She also told the petitioner that prior to her marriage she asked her father not to arrange any marriage for her and if any marriage was arranged, the bridegroom and his family members should be informed about the fact that she was taking treatment for mental illness and taking drugs for that. But unfortunately the parents of the respondent fraudulently suppressed the matter to the petitioner and his family members. The respondent also disclosed that she was taken by her parents to a Psychiatrist by name Dr.Jeyarama Krishnan in Tirunelveli



C.M.S.A.(MD)No.49 of 2013

Junction and she was given treatment for nervous weakness for a long time and on his advice tablets were being taken. Only at that time the Petitioner came to know that the respondent was affected by unsound mind and that was why she was found to be sitting hours together in a lonely place and also lying down on the bed for hours together without any sleep and that was why she was not showing any interest in sex. On coming to know of that the petitioner and his parents were shocked and suffered unbearable mental pain. The respondent also gave a prescription given by Dr.Jeyarama Krishnan for the respondent in June 2007 and thereafter in a contiguous manner. On 25.12.2008 the petitioner took the respondent to Dr.Jeyarama Krishnan at Tirunelveli Junction to find out whether the ailment suffered by the respondent is curable and whether there was any possibility of curing the ailment.

(III)In the meanwhile, the respondent had got conceived. So as per the custom of the community in her seventh month of pregnancy she was taken for delivery by her parents on 02.01.2009 morning. The petitioner advised the respondent that the respondent could take treatment with the help of her parents for the unsoundness of mind. But occasionally the respondent used to visit the petitioner's parents' house and return back to her parents' house. But unfortunately on the evil advice of certain persons who are indisposed off



C.M.S.A.(MD)No.49 of 2013

towards the petitioner and his parents. The respondent made to give a false and frivolous complaint to the All Women Police, Sankarankovil on 30.01.2009 as if the petitioner, his parents and his two brothers demanded dowry in an unlawful manner and drove her out of the house. Significantly the petitioner's younger brother by name Muppidathi is working as a Lecturer in a college at Erode and residing there with his wife. His another brother by nama Ganapathy is permanently settled at Madras and his wife is working in a company there as software engineer. The Sub-Inspector of Police, All Women Police sent for the petitioner and other persons named in the complaint. The petitioner alone went to the Police Station and the Police enquired and the petitioner told the entire truth as stated above. The Police were convinced that the complaint given by the respondent is a false one and they dropped the matter. There after again the respondent gave another complaint in a false and frivolous manner against the petitioner and his father to the D.S.P., Sankarankovil on 01.02.2009. The main object in giving the false complaint was to harass the petitioner and his father in an unbearable manner. This has caused unbearable mental agony, anguish and suffering for the petitioner and his parents. Hence, the petitioner is constrained to file this petition for dissolution of marriage on the ground of cruelty and also incurable unsoundness of mind being suffered by the respondent.



C.M.S.A.(MD)No.49 of 2013

4.The defense of the respondent wife in brief is as follows:-

Admitting the date of marriage that the marriage between the petitioner husband and the wife was solemnized on 18.02.2008 according to Hindu rites and Customs in Arumugu Sankaranarayanan Temple at Sankarankovil, the respondent wife denied each and every allegation which has been raised by the petitioner husband in his petition for divorce. The respondent categorically contended that an amount of Rs.30,000/- was given as dowry to the petitioner husband at the time of marriage along with watch, gold chain and ring as gift and that apart an amount of Rs.60,000/- was also given to the petitioner and his parents to meet out the marriage expenses. After the matrimony, the petitioner husband and the respondent wife commenced their matrimonial life along with the joint family of the petitioner husband. Before marriage, the petitioner husband was running a textile shop at Sankarankovil. Only after marriage, she came to know that the petitioner husband's father fraudulently took a loan in the name of the petitioner and had severed his ties with his son and thereafter, expelling the petitioner from the Management of the shop and the father had been running the shop himself. Even after knowing the truth, the respondent wife was leading a normal and amicable life with her husband along with his mother. While the petitioner's mother was admitted in Madurai Apollo Hospital in the month of April 2008, it was only the respondent wife who took all the



C.M.S.A.(MD)No.49 of 2013

house chores. That apart the respondent was ill treated by the petitioner's mother and on the guise that the respondent had brought bad luck and misfortune to the family. At the time of her marriage, 208 grams of gold jewelry were also given to her by her parents, however all the jewels were pawned by the petitioner husband's father for the debt incurred by him during the year 2008. All the allegations of mental illness as suffered by the respondent wife is absolutely false. On 31.05.2009, a baby girl was born to the respondent wife at Sankarankovil, Eswaran Hospital, but the petitioner did not turn up even to visit the new born child. He even avoided attending the naming ceremony of the baby which happened during the month of November 2008. When the respondent visited the petitioner in his textiles shop, she was threatened by her father-in-law that she should not visit them or come back to the matrimonial home without money.

5.Two witnesses were examined on the side of the petitioner and documents Ex.P1 to Ex.P5 were marked and on the side of the respondent, only one witness was examined and documents Ex.R1 to Ex.R3 were marked. The petitioner husband examined himself as P.W.1 likewise the respondent wife examined her as R.W.1. One doctor namely Jayarama Krishnan, who treated the respondent since 2007 has been examined as P.W.2.



C.M.S.A.(MD)No.49 of 2013

WEB COPY

6.The learned Trial Court proceeded to record that the petitioner husband while deposing his evidence as P.W.1 had given evidence in his examination in chief in terms of his petition for divorce in the said H.M.O.P. He had reiterated each and every allegation raised by him in the aforesaid petition. However, the learned Trial Court proceeded to observe that apart from deposing his evidence in tune to the allegations raised by him in his petition for divorce, he had not proved the aforesaid allegations with appropriate oral and documentary evidence. Further the learned Trial Court proceeded to observe that the petitioner husband had admitted in his evidence that from 18.02.2008 that is the date of marriage between the petitioner and the respondent till 10.12.2008, the petitioner husband did not had an iota of doubt as to any indifference or mental disorder suffered by the respondent wife. This itself would go to prove that the respondent wife is not suffering from any abnormality or mental disorder. Negating all the other allegations, the learned Trial Court proceeded to dismiss the said H.M.O.P.No.74 of 2009.

7.Assailing the same, the petitioner husband filed H.M.C.M.A.No.25 of 2012 before the learned III Additional District Judge, at Tirunelveli. The learned First Appellate Court fully relied upon the evidence deposed by P.W.2,



C.M.S.A.(MD)No.49 of 2013

one Doctor Jayarama Krishnan a Psychiatric Specialist, who was examined on the side of the petitioner husband. The said Doctor had stated in his evidence that he had earlier treated the respondent wife in an earlier occasion thereby marking Ex.P2 and Ex.P3, prescriptions issued by him to the respondent wife at the time of deposing his evidence. According to his evidence, it was found that the respondent had been to the Doctor's clinic as early as in the year 2007 itself. However, the marriage between the petitioner and the respondent took place on 18.02.2008. Though the respondent vehemently denied that she had gone to any Doctor for treating mental illness, the evidence deposed by the said doctor would categorically canvas this case of the petitioner that he had diagnosed the respondent with Bipolar Obsessive Disorder. That apart he also explained that persons affected with Bipolar Disorder would remain depressed or excited at times. He added that there is no assurance that the respondent wife would be cured. However, the learned Trial Court proceeded to observe that there is no preponderance of evidence on the side of the petitioner husband appropriately proving that the respondent wife had been suffering from mental illness and proceeded to pass an order in favor of the respondent wife. However, the First Appellate Court recorded that the evidence of P.W.2 would make it clear that even if the respondent wife suffers from any kind of mental disorder, it is not incurable and she can lead a normal life like all others if she takes medicine



C.M.S.A.(MD)No.49 of 2013

regularly and hence, the learned Trial Court proceeded to hold that the petitioner's petition seeking divorce on the ground of section 13(1)(1-A)(III) of the Hindu Marriage Act stands not proved. However, the First Appellate Court proceeded to further appreciate the evidence deposed by P.W.2 from a different context. Observing that P.W.2 doctor has got no personal motive to depose falsely before the Court that he had treated the respondent for mental illness even in the year 2007, the learned First Appellate Court proceeded to conclude that the preponderance of evidence will prove the allegation of suppression of the vital fact that the petitioner on coming to know the respondent wife's health condition, he had suffered severe mental agony due to the suppression of the said fact by the respondent and her parents. That apart recording the fact that in her anxiety to rejoining with the petitioner husband, the respondent wife also indulged in giving repeated complaints to the police which also backfired as against her.

8.Relying upon the report of the Protection Officer, Social Welfare Department, the learned First Appellate Court proceeded to record that all the allegations of dowry, which was raised by the respondent wife has been concluded before the Protection Officer, the Social Welfare Department as incorrect. Further the learned First Appellate Court concluded by holding that



C.M.S.A.(MD)No.49 of 2013

the cause of all the problems emanated from the suppression of the mental disability, which was suffered by the respondent even before marriage to her matrimonial partner by herself and her parents and all the other problems had fissured out as a consequence to the said suppression. In view of the same, suppression of a vital fact of having taken treatment for a psychiatric problem as an act of cruelty, which caused mental agony and mental abuse to the petitioner husband, the learned First Appellate Court proceeded to allow the petition for divorce in favour of the husband that the grounds of cruelty has been made out and duly proved by the petitioner husband.

9.Assailing the same, this Civil Miscellaneous Second Appeal came to be filed.

10.It is needless to state that the marriage which was held on 18.02.2008 between the petitioner husband and the respondent wife has been admitted and the factum that they commenced their matrimonial life in the shared matrimonial house of the petitioner husband is also not disputed. H.M.O.P., filed by the petitioner husband seeking divorce was of the year 2009. The same came to be filed by the husband on the grounds of cruelty and the respondent suffering unsoundness of mind. However, as far as the two limbs of his grounds



C.M.S.A.(MD)No.49 of 2013

are concerned, the petitioner had deposed his evidence as P.W.1 and to strengthen his argument that the respondent had suffered from mental disability, mental disorder and he also examined one doctor namely Jayarama Krishnan, a Psychiatric Specialist as P.W.2. They said P.W.2 has categorically deposed his evidence marking Ex.P2 and Ex.P3 prescriptions prescribed by him to the respondent as early as during the year 2007 for having taken treatment with him for Bipolar Obsessive Disorder. His evidence makes it clear that the said mental condition is not incurable. For better understanding Section 13(1) (III) is extracted here under:-

“(1)Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party -

(III)has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.”

So, the definition has made it clear that only if the mental condition of the respondent is incurably of unsound mind the petitioner husband could insist for divorce on that ground.

11.The evidence of P.W.2 would categorically prove that the mental



C.M.S.A.(MD)No.49 of 2013

condition suffered by the respondent wife though the treatment having been availed by her with the said doctor as early as from 2007 is not one that could be observed as incurable. In view of the same, the petitioners claim for divorce on the ground of unsound mind of the respondent fails. However, the learned First Appellate Court proceeded to further adjudicate the case of the petitioner husband, the other ground on the basis of which, he sought for divorce that is cruelty is made out and concluded that the respondent's attitude of having suppressed her mental condition before marriage to her spouse would certainly amount to cruelty which had caused unexplainable mental agony to the husband and in addition to that with her fond hope of rejoining her husband, she had in fact lodged a number of criminal complaints against her husband and in-laws which in fact aided the separation between the couple more gravely than augmenting unison between the couple.

12.The Hon'ble Apex Court in the case of *Sharda v. Dharampal* reported in **2003 (4) SCC 496**, has dealt with a divorce case filed on the ground of schizophrenia suffered by one of the spouses and the relevant portion of the same is extracted as follows:-

“14.This Court in [Ram Narain Gupta v. Rameshwari](#) 88 while considering a question as to whether a party to the marriage was suffering from schizophrenia observed:



WEB COPY

"14. Indeed the caution of a learned another against too readily giving a name to a thing is worth recalling: "Giving something a name seems to have a deadening influence upon all our relations to it. It brings matters to a finality. Nothing further seems to need to be done. The disease has been identified. The necessity for further understanding of it has ceased to exist."

It is precisely for this reason that a learned authority on mental health saw wisdom in eschewing the mere choice of words and the hollowness they would bring with them. He said:

"I do not use the word 'schizophrenia' because I do not think any such disease exists..... I know it means widely different things to different people. With a number of other psychiatrists. I hold that the words 'neurosis', 'psychoneurosis', 'psychopathic personality', and the like, are similarly valueless. I do not use them, and I try to prevent my students from using them, although the latter effort is almost futile once the psychiatrist discovers how conveniently ambiguous these terms really are....."

"In general, we hold that mental illness should be thought and spoken of less in terms of disease entities than in term of personality disorganization. We can precisely define organization and disorganization; we cannot precisely define disease....."

"Of course, one can describe a 'manic' or a 'depressed' or a 'schizophrenic' constellation of symptoms, but what is most important about this constellation in each case? (SIC) we thin, its curious external form, (SIC) rather what it indicates in regard to be process of



disorganization and reorganization of a personality which is in fluctuant state of attempted adjustment to environmental reality. Is the imbalance increasing or decreasing? To what is the stress related? What psychological factors are accessible to external modification? What latent capacities for satisfaction in work, play, love, creativity, are discoverable for therapeutic planning? And this is language that can be understood. It is practical language and not language of incantation and exorcism."

15. This medical concern against too readily reducing a human being into a functional nonentity and as a negative unit in family or society is law's concern also is reflected, at lest partially, in the requirements of [Section 13\(1\)\(iii\)](#). In the last analysis, the mere branding of a person as schizophrenic will not suffice. For purposes of [Section 13\(1\)\(iii\)](#) 'schizophrenia' is what schizophrenia does."

15. Having regard to the complexity of the situation, the doctor's opinion may be of utmost importance for granting or rejecting a prayer for a decree of divorce. The question is as to whether a mental disorder is curable can be subject matter of determination of by a Court of Law having regard to the expert medical opinion and particularly the ongoing development in the scientific and medical research in this direction."

13. In another case of **Sandeep Aggarwal v. Priyanka Aggarwal** reported in **2021 SCC Online Delhi 554**, the Hon'ble High Court of Delhi has dealt with a similar case and the relevant portion of the same is extracted as follows:-



“50. The fact that the parties could not live together beyond nine weeks itself shows that the mental disorder suffered by the respondent is of a kind, and to such an extent as to be unfit for marriage and the procreation of children. It is not the case of the respondent that either of the conditions enumerated in [Section 12\(2\)\(a\)\(i\)](#), or (ii) exists in the present case, which would have debarred the appellant from seeking annulment of marriage on the ground contained in [Section 12\(1\)\(b\)](#) of the Hindu Marriage Act. That is not the defence set up by her, or established by her. The failure on the part of the respondent to disclose her mental disorder before her marriage with the appellant - as alleged by him, constituted a fraud perpetrated upon the appellant. Apart from stating that the parties had met a few times before the marriage, the respondent has not specifically averred, or established, that the appellant was made aware of the mental disorder suffered by the respondent, which was passed-off by her as mere "headaches". Headaches-by themselves are not a disease. They are only symptoms of a disease. The Respondent does not state what caused her such serious and frequent headaches, which debilitated her from completing her studies.”

14.In the instant case, from Ex.P4 the complaint given by the respondent wife to the District Social Welfare Officer, Tirunelveli and the report of the Social Welfare Officer, which has been marked as Ex.P5, the learned First Appellate Court has recorded that the respondent wife's complaints as to dowry allegations has been closed by the District Social Welfare Officer as against the



C.M.S.A.(MD)No.49 of 2013

respondent wife. Fully concurring with the observation of the learned First Appellate Court that suppression of psychiatric problem before marriage cannot be negated as a trivial affair, this Court is of the considered view that each and every problem which fissured out from the matrimony of the petitioner husband and the respondent wife, if gone to the root of it would reveal that the same has emanated from the suppression of the psychiatric problem suffered by the respondent wife and the same has been duly proved through the evidence of P.W.2. Taking cue from the case reported in **2021 SCC Online Del 554**, I have no hesitation to hold that the suppression of the mental disorder of the respondent, for which she had undergone medical treatment, to her husband petitioner before marriage is obviously a fraud perpetrated upon the husband and such fraud, which has had a grave impact on the petitioner husband's life would certainly amount to cruelty. That apart in her effort to rejoining with her husband, the respondent wife has been wrongly advised by the elders of her family to lodge repeated criminal complaints against the petitioner husband and his family, licking the wounds of the petitioner husband and subjecting him to more mental agony, which certainly amounts to cruelty and hence I am of the considered view that the decision of the First Appellate Court to grant divorce on the ground of cruelty need not be interfered.



C.M.S.A.(MD)No.49 of 2013

15. Accordingly, this Civil Miscellaneous Second Appeals stands dismissed. The judgment and decree passed in H.M.C.M.A.No.25 of 2012 on the file of III Additional District and Sessions Court, Tirunelveli, Tirunelveli District dated 16.07.2013, is hereby confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

19.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1. The III Additional District and Sessions Judge, Tirunelveli.
2. The Sub Judge, Sankarankovil, Tenkasi District.
3. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.S.A.(MD)No.49 of 2013

L.VICTORIA GOWRI, J.

Mrn

C.M.S.A.(MD)No.49 of 2013

19.06.2024