



C.M.A.(MD)Nos.305 and 368 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2024

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.M.A.(MD)Nos.305 and 368 of 2023

CMA(MD) No.305 of 2023

S.Venkatesh

.... Appellant/Respondent

vs.

Maheswari

...Respondent/Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 19(1) of Family Courts Act, 1984, to set aside the fair and decreetal order dated 30.12.2022 passed by the Family Court, Trichy in HMOP No.428 of 2014

For Appellant

:Mr.J. Barathan
for Mr. K.Shanmuga Sundaram

For Respondent

:Mr.S.Savarimuthu
for M/s.Father Xavier Associates

CMA(MD) No.368 of 2023

S.Venkatesh

.... Appellant/Petitioner

vs.

Maheswari

...Respondent/Respondent



C.M.A.(MD)Nos.305 and 368 of 2023

Prayer: Civil Miscellaneous Appeal filed under Section 19(1) of Family Courts Act, 1984, to set aside the fair and decreetal order dated 30.12.2022 passed by the Family Court, Trichy in HMOP No.860 of 2014

For Appellant :Mr.J. Barathan
for Mr. K.Shanmuga Sundaram

For Respondent :Mr.S.Savarimuthu
for M/s.Father Xavier Associates

COMMON JUDGMENT

(Judgment of the Court was delivered by **P.VELMURUGAN, J.**)

Civil Miscellaneous Appeal No.305 of 2023 has been filed to set aside the fair and decreetal order dated 30.12.2022 passed by the Family Court, Trichy in HMOP No.428 of 2014.

2. Civil Miscellaneous Appeal No.305 of 2023 has been filed to set aside the fair and decreetal order dated 30.12.2022 passed by the Family Court, Trichy in HMOP No.860 of 2014.

3. For the sake of convenience, the parties are referred to as per their ranking in the Family Court in HMOP No.860 of 2014.



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4. The petitioner filed a petition for divorce in HMOP No.329 of 2012 on the file of the Sub Court, Tiruchirappalli and thereafter it was transferred to the file of Family Court, Tiruchirappalli and the same was re-numbered as HMOP No.860 of 2014. HMOP No.428 of 2014 was filed by the respondent for restitution of conjugal rights on the file of the Family Court, Tiruchirappalli.

5. The Family Court, Trichy had tried both cases jointly and delivered a common judgment, wherein the Family Court dismissed the petition filed by the petitioner for divorce and allowed the petition filed by the respondent for restitution of conjugal rights. Aggrieved over the said judgment and decree the present appeals have been preferred by the petitioner.

6. A joint trial was conducted in both cases and evidences was recorded in HMOP No.428 of 2017 in which the respondent was examined as P.W.1 and on her side one independent witness was



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examined as P.W.2 and nine documents were marked as Exs.P.1 to P9.

On the side of the respondent, respondent was examined as R.W.1 and another one independent witness was examined as R.W.2 and six documents were marked as Exs.R1 to R5 and also three documents were marked as Exs. X1 to X3 through independent witnesses.

7. The learned Judge, Family Court after hearing the parties and perusing the records dismissed the petition filed by the petitioner and allowed the petition filed by the respondent. Challenging the same, the petitioner has preferred both the appeals.

8. The brief facts of the petitioner before the Family court are as follows:

The marriage between the petitioner and the respondent was solemnized on 08.12.2018. The father of the respondent is Edward who is Christian. Even prior to their marriage, when the petitioner and his parents asked about the religion of the father of respondent, it was stated



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that her mother is Hindu. After marriage since the mother of the respondent is Hindu and her father belongs to Reddiyar community they are following hindu religion and customary activities of the Hindu. Believing the words of the father of the respondent the parents of the petitioner gave consent for marriage. After marriage the respondent got transferred from Bangalore to Mumbai and they are living together for sometime in Mumbai. Out of their lawful wedlock the respondent got pregnant and after confirmation of pregnancy the respondent informed the same to the petitioner. The respondent has not followed the hindu religion and hindu festivals and she wanted to convert from hindu religion to Chrisitan religion. But the petitioner was not amenable and he refused for conversion Whiles, while they were living in Mumbai the respondent without informing the petitioner got converted into Christian religion. After knowing the same, the petitioner questioned the same and requested her to get converted into hindu religion, for which the respondent sought time. In the meanwhile the petitioner got a job at Saudi Arabia and went there. Thereafter the respondent got transferred from Mumbai and went to Bangalore and working as a software



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Engineer. During her ninth month valaikappu festival was conducted at the house of the petitioner at Karur as per hindu rites and customs . Thereafter the respondent left Karur for her delivery to Trichy. While the respondent was living at Mumbai she tortured the petitioner to give his full salary to her and not to send any money to his parents. Since the petitioner was not yielding to the words of the respondent she started torturing the petitioner in so many ways. After the respondent went for delivery to her house she did not ask for any maintenance from the petitioner and even did not inform him the birth of the child to him. The petitioner came to know about the birth of the child through third parties and also without the consent of the petitioner she performed the Christian rituals to the child. The petitioner told the respondent to follow the hindu religion and not to follow the christian religion, but the respondent was adamant in doing so, when the same was questioned, the respondent gave all sorts of mental torture by abusing him and also by doing other acts. The respondent insisted the petitioner to get himself converted in to Christian but the petitioner declined to do so, hence she gave mental torture to the petitioner. Thereafter the parents of the



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petitioner informed the same to the parents of the respondent for which inspite of giving advice to the respondent they have also scolded the petitioner and his parents by using filthy language and threatened them with dire consequences. The petitioner was unable to tolerate the mental cruelty caused by the respondent, hence the petitioner issued lawyer notice to the respondent on 08.1.2011. Even though she received the notice she did not send any reply. Therefore the petitioner filed petition for divorce in HMOP No.329 of 2012 on the file of the Sub Court, Trichy on the ground of cruelty and desertion and subsequently the same was transferred to Family Court.

9. The brief facts of the case of the respondent before the family Court is as follows:

The marriage between the petitioner and the respondent was solemnized on 08.12.2008 as per hindu rites and customs. The respondent got post graduation in Computer science and at the time of marriage she was working as a software engineer in Bangalore. The petitioner is a B.E graduate and working in a private company at



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Mumbai. Soon after the marriage the petitioner and the respondent were living together as husband and wife at the house of the petitioner at Woraiyur for about a week and thereafter the petitioner left for employment to Mumbai and the respondent left for employment to Bangalore. Thereafter during the month of November 2009 in order to join with the petitioner, the respondent got a request transfer and went to Mumbai and they took a plot for rent at Mumbai and they started living there. The petitioner requested the respondent to get advance amount of Rs.40,000/- from her father for payment of advance amount to the house. The father of the respondent parted with the money with hesitation. The marriage life of the parties was smooth till March 2010. In the meantime the respondent got pregnant but the petitioner told the respondent not to inform the same to any one till the pregnancy was confirmed by the doctor and that some trouble started between them and the petitioner was under the impression that the respondent would convert the child into christian hence he forced her to abort the child for which she refused. During the last week of March 2010, the petitioner went to Saudi Arabia for employment and the respondent continued her job in Mumbai till



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May 2010 and thereafter she got transferred to Bangalore and stayed there. Even the valaikappu function was done only according to hindu rites and she never converted into Christian and also she never converted the child into christian and she only followed the hindu religion. Though for the valaikappu function information was given to the petitioner and his family members they initially refused but thereafter they participated in the function. Thereafter on 24.12.2010 the respondent delivered a male child and when the same was infomed to the family of the petitioner they never showed any interest. The petitioner and his family members never came to see the child. Thereafter, suddenly on 08.01.2011 the petitioner has sent a legal notice to the respondent with false allegations stating that the respondent converted herself into christian without informing anybody and she voluntarily deserted him and hence filed a petition for divorce. The respondent immediately filed an application for restitution of conjugal rights. Hence according to the respondent the above appeals filed by the petitioner are liable to be dismissed.



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10.The learned counsel appearing for the petitioner would contend that the petitioner believed that the respondent followed hindu religion and hence he married her. Soon after the marriage she showed her real colour and that she insisted him to hand over the entire salary to her and also restricted the petitioner from sending money to his parents, that she also converted into Christian and even she has not come with the petitioner to the temple, that she used to go to church and she herself without the knowledge and consent of the petitioner converted into Christian religion and that she wore a chain with cross dollar and also Ex.R.5 photo itself would show that she wore a chain with cross dollar and she also deserted the petitioner and she did not even inform the birth of the child to the petitioner and the respondent did not even allow the petitioner to visit the child and without the knowledge and consent of the spouse the respondent converted into Christian and that itself is a ground for divorce. The respondent filed an application for restitution of conjugal rights only as a counter blast to divorce petition. The Family Court failed to look into the above aspects and without considering the same simply dismissed the petition filed by the petitioner and allowed



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the petition filed by the respondent . He would further submit that even during the cross examination the respondent admitted that she wore a chain with cross dollar always. The said admitted fact would show that she converted into Christian. It is settled proposition of law that the admitted fact need not be proved. He would further submit that the respondent did not deny the allegation of desertion and conversion into Christian and the petitioner sent notice to the respondent making such allegations. The respondent neither made any attempt to send reply nor send any notice to the petitioner. The Family Court did not make any discussion on that aspect. Further he would submit that the petitioner filed petition for divorce on the ground of desertion, cruelty and conversion into some other religion. The Family Court failed to frame specific issues on those grounds. Without even framing any issues and without having any discussion over the said grounds the Family Court has dismissed the petition filed by the petitioner for divorce and allowed the petition filed by respondent for restitution of conjugal rights, which is against settled proposition of law. He would further submit that even the respondent categorically admitted during the cross examination that



baby shower function was conducted at nine months in her parental house which is not customary practice followed in the Hindu religion but usually baby shower function will be conducted only in the matrimonial home and not in the parental home. After the respondent deserted the petitioner ceremony was conducted in her parental home for which the petitioner was not invited. The said fact also not considered by the Family Court and the Family Court failed to consider the facts and circumstances of the case. The trial Court failed to consider the decisions of the Hon'ble Apex Court in the case of *Savitri Pandey vs Prem Chandra Pandey* reported in **2002 (2) SCC 73** and also in the case of *Ramchander v. Ananta* reported in **(2015) 11 SCC 539**. In view of the categorical pronouncement of the judgment of the Hon'ble Apex Court the act of the respondent would come within the definition of mental cruelty and the petitioner is entitled for the order of dissolution of marriage. Further the respondent conducted the ceremony of the child in accordance with Christian rites and customs and the respondent also did not deny the same. The Family Court also failed to consider the same and rejected the claim of the petitioner by accepting the claim of the



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respondent which is against the settled proposition of law. The order of the Family Court is liable to be set aside and both the appeals are liable to be allowed and the marriage between the petitioner and respondent has to be dissolved.

11. The learned counsel appearing for the respondent would contend that the petitioner very well knew about the fact that the name of the respondent father is Edward, which is a christian name. But he himself stated that they are only following hindu culture . The mother of the respondent was only Hindu and even the forefather of the respondent was also Hindu. The father of the petitioner belongs to Reddiyar Community and after enquiring the same only they got married and at the time of marriage the petitioner was working in Mumbai and the respondent was working in Bangalore. After a week the petitioner shifted to Mumbai for his job and immediately the respondent also got herself transferred to Mumbai to live with the petitioner and she also became pregnant and went only for delivery to her parental home and as per their rites and customs the first child would have to be born at the



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parental home. In the meanwhile, as the petitioner got job in Saudi Arabia, he left Saudi Arabia, for which the respondent went to Airport to send off. The baby shower function was conducted in the seventh month at the house of parents of the petitioner . Therefore as per the customs only the function was celebrated. Thereafter during the 9th month of pregnancy they conducted baby shower function as per their customs. This fact was not denied by the petitioner. The allegation against the respondent is that she only deserted the petitioner and if she really had an intention to desert the petitioner she could not have got transferred from Bangalore to Mumbai and lived with the petitioner in Mumbai. Even she got financial help from her father to set up family at Mumbai. She lived with the petitioner at Mumbai till he left Saudi Arabia for job. Since she was in the family way, she went to the parental house with the consent of the petitioner . The birth of the child was duly intimated to the petitioner and also had a conversation with the respondent over phone several times and also the petitioner gave a surprise gift to the respondent.. There is no any such allegation or such misunderstanding between them. Though she admitted that she wore a chain with cross



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dollar it does not amount that she converted into Christian. Admittedly she studied in the Christian school but the counsel for the petitioner stated that she used to go to church but no independent witness were examined on the side of the petitioner against the respondent on this allegation. The trial Court taking into consideration the fact that the petitioner has not proved the allegations levelled against the respondent dismissed the petition. The trial Court further took into consideration that the respondent has expressed her willingness to join with the petitioner and and the petitioner left abroad only for his job. The trial Court came to the conclusion that no materials has been placed by the petitioner to substantiate the allegation on the aspect of conversion of respondent into christian religion against the wishes of the petitioner. The Family Court appreciated the oral and documentary evidence and rightly dismissed the petition filed by the petitioner for divorce and allowed the application filed by the respondent for restitution of conjugal rights and there is no merits in the above appeals and the same are liable to be dismissed.



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12. Heard both sides and perused the materials available on record.

13. It is an admitted fact that the petitioner has filed a petition for divorce and respondent has filed petition for restitution of conjugal rights. The petitioner has filed counter for the application filed by the respondent and the respondent has also filed counter for the petition filed by the petitioner both vice versa. As the allegations levelled are one and the same, the trial Court tried both the cases jointly and delivered a common judgment.

14. This Court as an appellate Court has to independently decide the above appeals based on the oral and documentary evidence available on record. Therefore based on the above pleadings and oral and documentary evidence the points that are taken into account for determining the appeals are as follows:

a) Whether the petitioner proved the allegation of cruelty?



b) Whether the petitioner has proved the allegation of conversion of religion into Christianity?

c) Whether the petitioner has proved the desertion by the respondent?

d) Whether the order passed by the Family Court requires to be interfered?

15. As far as the first point is concerned even though the petitioner has alleged that the respondent has caused mental cruelty and soon after the marriage she insisted to give the entire salary to her and not to give any money to the parents of the petitioner. The respondent has stoutly denied the same and also filed an application for restitution of conjugal rights. When the respondent has denied the allegations made by the petitioner it is the duty of the petitioner to prove the allegation. The respondent has not examined any independent witness to prove the same and even the evidence of R.W.1 and R.W.2 has not substantiated the same. The respondent herself examined as P.W.1 and one independent witness was examined as P.W.2 and they have not substantiated the allegations. The reading of the entire materials and the oral and documentary evidence of the petitioner and the respondent while re-



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appreciating the evidence this court has not find that the petitioner has proved that the respondent has caused mental cruelty as caused by the respondent. Therefore in the absence of any specific proof the petitioner is not entitled to get divorce on the ground of mental cruelty.

16. As far as the second point is concerned though the petitioner has made specific allegation that the respondent converted herself into Christian religion for which he has not produced any proof for the same. Further from the facts as stated above it is clear that it is not a love marriage and it is only an arranged marriage. It is clear from the fact that prior to marriage the petitioner family enquired about the religion of the respondent family and found that they belong to Reddiyar community and the mother of the respondent is Hindu and their forefathers are also following Hindu religion. Further no materials have been produced to show that the respondent converted herself into christian religion and followed Christianity, except the fact that she wore a gold chain with a cross dollar by marking Exs.R.5 and R6. Further the respondent has denied all the allegations levelled against her except woring a gold chain



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with cross dollar. Even in the counter statement filed by the petitioner in the petition filed for restitution of conjugal rights no materials are available to substantiate the allegations. Therefore in the absence of any specific proof the petitioner is not entitled to get divorce on the ground of conversion of religion.

17. As far as the third point is concerned, it is the case that the respondent deserted him and left the matrimonial home and thereafter started living in her parental home but the materials show otherwise. Though the marriage was solemnized on 08.01.2018 after one week the petitioner left to Mumbai for his work and at that time the respondent was working in Bangalore and thereafter she voluntarily got transferred to Mumbai and lived with the petitioner. She became pregnant. Baby shower function had taken place at petitioner's home. The said fact was not denied by the petitioner. However the petitioner alleged that she did not inform the birth of the child and did not even allow the petitioner to visit the child. As per hindu rites only baby shower function was performed in the seventh month and the respondent went to her parent's



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house for delivery. There are materials to show that the petitioner used to interact with the respondent over phone and also when he came to India he gave a surprise gift to the respondent and there is no materials to prove that the respondent voluntarily left the matrimonial home without any valid reason with the intention to desert the petitioner. However the petitioner made allegation that even during the stay at Mumbai she converted herself into Christian also stated that she left the matrimonial home. As such this Court do not find any materials to show that the respondent left the matrimonial home without any valid reason and without the knowledge of the petitioner with an intention to desert him and stay away from the matrimonial house. In the absence of same, the petitioner is not entitled to get divorce on the ground of desertion .

18. The appellate Court while re-appreciating the evidence of the above said facts this Court does not find any *iota* of evidence that the petitioner has proved the allegations levelled against the respondent. The petitioner very well knew prior to marriage itself about the religion of the respondent and his father's name is Christian name and after enquiring



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about their family details only petitioner family accepted for marriage. As rightly contended by the learned counsel appearing for the respondent except the photos in which the respondent was wearing a gold chain with cross dollar no other materials to show that the respondent converted into Christian and mere wearing of gold chain with cross dollar itself would not amount to conversion of religion. There are no materials available to show that the respondent converted herself into christian. It is for the petitioner to prove the same except the fact that she wore a chain with cross dollar and no materials were produced by the petitioner to substantiate the allegation levelled against the respondent. Under such circumstances the Family Court has also given reasons for dismissing the petition filed by the petitioner and allowing the petition filed by the respondent. Since this Court as appellate Court while re-appreciating the evidence independently find that the petitioner has not substantiated the allegations levelled against the respondent and not produced any materials to substantiate the grounds taken, viz., mental cruelty, converted into Christian and also desertion. Therefore this Court finds that there is no merits in these appeals and deserves to be dismissed.



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19. Further the learned counsel appearing for the petitioner has relied on the following judgments:

a) Naveen Kohli.Vs. Veelu Kohli reported in 2006 (4) SCC 558

b) Samar Ghosh .vs. Jaya Ghosh reported in 2007 (4) SCC 511

c) Shilpa Sailesh Vs. Varun Srinivasan reported in 2023 3 CTC 550

d) Beena M.S.Vs.Shino G.Babu reported in 2022 SCC Online Ker 778

e) Ramanathan .vs . Rajo 2023 reported in SCC Online Ker 8359

20. A careful perusal of the above said judgments would clearly reveal that the facts of the above cases are not applicable to the present case on hands and facts of the both cases are entirely different from each other.



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21. Accordingly, both the appeals are dismissed, confirming the judgment of the Court below. No costs.

(P.V., J.) (K.K.R.K., J.)
13.08.2024

NCC:Yes/No
Index:Yes/No
Speaking/Non-speaking order

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To

- 1.The Family Court, Trichy
- 2.The Section Officer,
Vernacular Records Section,
Madurai Bench of Madras High Court,
Madurai.



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