



C.M.S.A.(MD).Nos.24 and 25 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 01.08.2024

DELIVERED ON : 21.10.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.S.A.(MD).Nos.24 and 25 of 2021
and C.M.P.(MD).No.3718 of 2021

V.Selvarajan ... Appellant/Appellant/Respondent/Husband
in C.M.S.A.(MD).No.24 of 2021
... Appellant/Appellant/Petitioner/Husband
in C.M.S.A.(MD).No.25 of 2021

Vs.

G.Aarthi ... Respondent/Respondent/Petitioner/Wife
in C.M.S.A.(MD).No.24 of 2021
... Respondent/Respondent/Respondent/Wife
in C.M.S.A.(MD).No.25 of 2021

PRAYER : Civil Miscellaneous Second Appeals filed under Section 28(1) of Hindu Marriage Act, 1955 r/w Section 100 of the Civil Procedure Code, to set aside the Judgment and Decree dated 16.12.2020, passed in H.M.C.M.A.Nos.3 and 4 of 2017 on the file of the Additional District and Sessions Court, Virudhunagar District confirming the Judgment and Decree dated 05.09.2017 passed in H.M.O.P.Nos.87 and 77 of 2012, on the file of Sub Court, Virudhunagar.

For Appellant : Mr.R.Gandhi for Mr.K.Seenivasagam
For Respondent : Mr.G.Mariappan
(in both appeals)



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COMMON JUDGMENT

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These appeals have been filed to set aside the Judgment and Decree dated 16.12.2020, passed in H.M.C.M.A.Nos.3 and 4 of 2017 on the file of the Additional District and Sessions Court, Virudhunagar District confirming the Judgment and Decree dated 05.09.2017 passed in H.M.O.P.Nos.87 and 77 of 2012.

2.The facts in brief:

It is a matrimonial issue. The petition in H.M.O.P.No.77 of 2012 was filed by the husband namely Selvarajan against the wife namely the second respondent seeking the order of divorce dissolving the marriage solemnized between them on 05.09.2010 with the following averments. The marriage between the parties were solemnized as per their customary rites on 05.09.2010 in Selva Vinayagar Kalyana Mandapam, Virudhunagar. A male child by name Sanjai Karthik was born. Within a month of the marriage misunderstanding arose between them. At that time, he was employed at Karur Vaisiya Bank for about 7 months. They are living together. Later he was transferred to Tiruvanamalai. Even in Tiruvannamalai there is no understanding



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between them. After few months of marriage, the respondent started to treat the petitioner cruelly; went to the parents home for about 6 months without any reason, used to abuse him and his family members. She was making compulsion upon the petitioner not to give any support to the parents. And started saying that she married a impotent person. Even went to the extent of stating that he showing his private parts. And for about three times, she threatened to commit suicide, in the month of July and August 2012. On 01.09.2012 she went to her parental home and thereafter did not return. When the petitioner visited the house, he was not permitted inside. The petitioner was made to suffer Psychologically and physically also. But efforts made by the petitioner for having peaceful life did not yield any result. He filed the petition seeking divorce.

3.Counter was filed by the wife stating that the allegation in the petition are false and invented for the purpose of getting divorce. There was no proper understanding during their living in Mumbai and Thiruvannamalai. On 02.09.2012, they came to attend the relatives' marriage. They came down to Virudhunagar and visited both parental



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houses; The petitioner and the respondent purchased saree, mobile phone for the wedding day to be celebrated on 05.09.2012. On 02.09.2012, he was taken to her parental home by the petitioner himself and left there promising to return back and take them, on 03.09.2012. In stead of taking the child and wife to the matrimonial home, he did not come back to pick up them.

4. Simultaneously, H.M.O.P.No.87 of 2012 was filed by the wife under section 9 of the Hindu Marriage Act seeking order of restitution of conjugal rights. Counter was filed reiterating the very same averments made in the petition seeking divorce. Both were taken up by Sub Judge, Virudhunagar.

5. At the conclusion of the enquiry process the husband's petition seeking divorce was dismissed and the wife's petition for restitution of conjugal rights was allowed, by common order, dated 05.09.2017. Against which the husband filed two appeals before the appellate Court namely the Additional district Judge, Virudhunagar in C.M.A.Nos.3 and 4 of 2017. A common order was passed dismissing both appeals



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concurring with the finding of fact recorded by the trial Court. Against which these two Civil Miscellaneous Second Appeals are filed by the husband.

6.Heard both sides.

7.The marriage took place on 05.09.2010. At that time, the husband was employed in a private bank in Mumbai. For about 7 months, there was no problem between them. In fact a child was born on 12.07.2011. After 11 months, they living jointly in Thiruvannamalai. Husband travelled to Thiruvannamalai. Wife was also followed him and living together. There was no problem between them according to the wife. All of a sudden on 04.09.2012, which means within 5 months from the date of birth of the child, according to the wife, they came down to Virudhunagar to attend a marriage of relative. At that time she was left in the parental home. Thereafter, the appellant did not turn up. So the sequences of events shows that within a short time of marriage this separation occurred.



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8.The learned senior counsel for the appellant would submit that after separation they are living separately for about 12 years and during the course of joint living, not once, but, thrice the wife threatened to commit suicide for no reason. The second allegation is that she called him as impotent. The third allegation is that he was not permitted to take care his parents. These are the major allegations levelled by the husband against the wife. The conduct of the husband is a paramount consideration. But, nowhere, there was any substance in the allegation. Because he has stated in the evidence that absolutely, there was no evidence on record to show that the threat of commission of suicide by the wife was brought to the notice of the parents. Reading of the appellant's evidence does not inspire any confidence at all with regard to the allegation of threat of suicide by the wife. So it is nothing but an invented story by the petitioner without any substance or reason. Next allegation is that she used to call the husband as impotent. Except the statement in the petition no evidence in the form of circumstantial or document is brought on record.

9.The learned senior counsel for the appellant would rely upon the



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following judgment for the purpose of argument that calling the husband as impotent will amount to a cruelty. The Judgment of the High Court of Delhi passed in the case of ***MAT.APP.(F.C.).92 of 2021 dated 21.03.2024.***

10.This Court also reject the allegation for the reason that as mentioned above a child was born in the year 2011. When that is being so, the allegation that he was called as impotent by the wife is highly exaggerated and does not even stand to reason. These are created by the husband simply for the purpose of creating cause of action for the petition.

11.The learned senior counsel for the appellant will rely on the the averments made by the wife in the petition filed seeking restitution of conjugal rights in H.M.O.P.No.87 of 2012. In para 7 it has been stated by the wife that from the beginning of the marriage, the husband was not interested in the family life. He used to sleep immediately after returning from his office. So according to the learned senior counsel for the appellant this itself shows and corroborate circumstantial evidence.



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According to him, all the averments in para 7 of the petition is that the husband is a impotent. Such sort of reasoning or meaning or interpretation cannot given. Even in the evidence, the wife, has stated that she never stated in the petition that the husband was not interested in the family life. But as mentioned above, it cannot be stretched beyond the meaning and substance. So this allegation is also not established on the side of the husband that he was called as impotent and that is enough for granting divorce.

12.It is not a highly unreasonable and without answering the common sense that after the birth of the child, the wife called the husband as impotent. So as mentioned above this allegation is also invented by the husband for the purpose of petition, which need not be given any importance at all.

13.The next argument on the side of the appellant is that the wife is making unfounded allegation against the character. He is referring to the Judgment of the High court of Kerala at Ernakulam in ***MAT.Appeal No.254 of 2015, dated 31.05.2021*** and draw the attention of the Court to



the para 18 of the judgment.

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“18. It is settled that the unsubstantiated accusation and character assassination in a written statement would constitute mental cruelty. The Supreme Court in Vijaykumar Ramachandra Bhate v. Neela Vijaykumar Bhate (AIR 2003 SC 2462) has held that unsubstantiated disgusting accusations made by one spouse against the other in the written statement constitutes mental cruelty for sustaining the claim for divorce. In K. Srinivas Rao v. D. A. Deepa (AIR 2013 SC 2176), it was held that making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings amount to causing mental cruelty to the other spouse. In Gangadharan v. T. K. Thankam (AIR 1988 Kerala 244), this Court held that false, scandalous, malicious, baseless and unproved allegation made by one spouse, whether by letters or written statement or by any other mode, amounts to cruelty.”

For that purpose the learned senior counsel for the appellant draw the attention of the court of the finding of the court in para 10.



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14.No we will go to the finding of the trial Court on that aspect in para 10. In para 10 no such finding was recorded by the trial Court that the wife made derogatory allegation or insulting statement against the husband. It has been simply stated that he has no issues with regard to the conjugal relationship. They would have made attempt that too have proper treatment. This is the observation that has been made by the trial court with regard to the allegation made by the petitioner. So that cannot be taken advantage by the husband stating that the finding has been recorded with regard to the unfounded allegation that a derogatory statement against the physical condition of the husband. So these arguments are also not available to the appellant herein.

15.As mentioned above, the conduct of the appellant must be taken into consideration. The wife and child were taken to the parental home. After attending the relative's marriage, they were left there and thereafter, the appellant did not turn back. Not even an attempt was made by him to reconcile the issue not even an advocate notice was issued before filing the petition for divorce. As mentioned above, on 05.09.2012, he left the son and the wife in her parental home and filed the petition seeking



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divorce in the same month namely on 17.09.2012. So this makes the intention on the part of the appellant clear. For no reason he left the wife and child and for no reason he has filed petition seeking divorce. Such sort of conduct and attitude cannot be encouraged.

16. 12 years lapsed after separation, due to the wanton act on the part of the appellant. A person cannot be permitted to take advantage of his own wrong. That is basic principle. So the appellant cannot take advantage of his own wrong stating that there is 12 years period of separation.

17.The learned counsel for the respondent relied upon the judgment of the Honourable Supreme Court in *Mangayakarasi Vs. M.Yuvaraj* reported in **2020 (2) T.N.C.J. 588 (SC)** and have submitted that a mere long separation is not sufficient enough to grant decree of divorce.

17.It is further stated that regularly he was paying Rs.15,000/- towards maintenance of child. And even he is ready to pay and bear the



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expenses for the child's studies. There is some difference of opinion with regard to the arrears of maintenance. The appellant sending the arrears of maintenance. It is beyond the jurisdiction of this Court now. So for all the reasons stated above, the appeals lack merit and reason also. Both the appeals fail and dismissed. No costs.

21.10.2024

Index : Yes / No
Internet : Yes / No
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To

- 1.The Additional District and Sessions, Virudhunagar.
- 2.The Sub Judge, Virudhunagar.
- 3.The Section Officer, E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVAN,J.

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