



C.M.A(MD)No.661 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :18.10.2024

CORAM

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

C.M.A(MD)No.661 of 2024

K.Arockia Parthiban

...Appellant

Vs.

A.Margaret Alphonsa

...Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, to set aside the order passed in O.P.No.170 of 2023 dated 06.02.2024, on the file of the Family Court, Sivagangai.

For Appellant : Mr.J.Jeyakumaran

For Respondent : Mr.S.Srinivasa Raghavan

J U D G M E N T

[Order of the Court was made by **Mr.K.K.RAMAKRISHNAN, J.**]

This Civil Miscellaneous Appeal has been filed by the husband, challenging the dismissal of his divorce petition filed under 10 (1) (X) of



C.M.A(MD)No.661 of 2024

WEB COPY

the Indian Divorce Act by the impugned judgment and decree in I.D.O.P.No. 170 of 2023 on the file of the Family Court, Sivagangai.

2. The appellant and the respondent are Christians. The appellant married the respondent on 19.05.2010 at Kalaiyarkovil Arulanathar Church as per the Catholic rituals. Prior to the marriage, the appellant's parents were working in the Premier Mills- Hosur and hence, they had a residence in Pagalur Village near Hosur. The appellant is a teacher and worked in a place near Hosur and was living with his parents in the said village. After the marriage, the appellant took the respondent to Pagalur Village. Within 15 days of marriage, the respondent wanted to pursue her M.Phil study in her parent village namely Kalayarkovil. Therefore, the appellant got transfer to a place nearby Kalayarkovil village which comes under Kallal Education Union. On 15.09.2010, the respondent was asked to participate in teacher appointment interview conducted by Government and she got the appointment in Villupuram District. According to the appellant, she did not make any request for appointment near appellant's parents residence at Hosur. Thereafter at her request, on 01.03.2011, the appellant arranged for her transfer and the same got



C.M.A(MD)No.661 of 2024

WEB COPY

materialized and the respondent was transferred to a nearby place close to Kalayarkovil. From that place, the respondent without looking after him, used to frequently leaving the matrimonial home without informing the appellant and stayed at her parent's house. Therefore, some dispute arose and the same was amicably by settled a group of teachers and they had a reunion. Through the happy reunion, on 14.09.2011 a female child was born and on 05.11.2014 another female child was born. Subsequently, the appellant planned to construct 1st floor in his father house in order to save the rental burden at the cost of Rs.15,00,000/- for which he demanded jewels of the respondent and also her arrear salary amount of Rs.1,50,000/-. In this regard there was some dispute and the appellant alleged that the respondent picked a fight and broken her ATM card. Subsequently on 21.07.2016, the appellant alleged that the respondent hit him with a key and hence he sustained injuries for which, he had taken 7 days medical leave. After the said incident, the respondent allegedly went to her parents house along with the children. On 20.08.2016 the appellant issued a advocate notice and compromise was entered into and they started their matrimonial life back. In the year 2017 the appellant's parents were suffering from illness and hence the appellant asked her to



C.M.A(MD)No.661 of 2024

WEB COPY

come along with him to see them, but the respondent refused to come and did not allow him to go to his house. Therefore, again she left the matrimonial home. Subsequently after 4 months, due to the intervention of the elders a compromise was arrived and agreed to live separately. A separate residence was taken and both were living upto 2018. In 2018 once again in order to a save the rental cost, both planned to live in the house of the appellant's father. According to the appellant, from the year 2021 onwards, he found some change in the conduct of the respondent i.e., she had been frequently talking to some other persons in unusual manner. Therefore, some dispute arose regarding this suspicion. That being the situation, on 26.12.2022 at 07.45 p.m., according to the appellant, the respondent asked her uncle's son to assault the appellant. Therefore, he made a complaint at the Kalayarkovil Police Station on 27.12.2022. They issued CSR No. 1537 of 2022 and made a compromise. Subsequently, the said complaint was transferred to Sivagangai All Women Police Station. In Sivagangai All Women Police Station, a compromise was arrived at to live separately. In the meantime, on 05.02.2023, the respondent is said to have conducted "*Holy Communion*" function at Arulanathar Church without inviting the



C.M.A(MD)No.661 of 2024

WEB COPY

appellant and his family members. The said function is more special one and hence the respondent ought to have invited the appellant and his family members. Subsequently on 17.02.2023, the appellant's father made a complaint at the Kalaiyarkovil police station asking the respondent to remove her house hold articles kept in the house. The said police officer conducted enquiry and thereafter the respondent is said to have removed a part of her house hold articles. In between, the appellant filed the I.D.O.P.No. 170 of 2023 seeking divorce under section 10 (1) (X) of the Indian Divorce Act alleging the above act of the respondent which amounts to both physical and mental cruelty and also on the ground of separation from 26.12.2022 onwards which also amounts to cruelty. Apart from that the respondent failed to subscribe his name as a nominee in her service record which also amounts to cruelty. Conduct of the respondent paying her salary to her parents and purchasing the property in their name amounts to mental cruelty and with these allegations he filed the above I.D.O.P.

3. The respondent has filed the counter specifically denying the above allegation and stated that due to the non-availability of the vacancy



C.M.A(MD)No.661 of 2024

in the Hosur education union, she had preferred her appointment in the vacancy available at Villpuram District. Therefore, the allegation that vacancy was available at Hosur and she intentionally preferred Villpuram is not correct.

3.1. Considering the working place of the appellant, she got transfer to the school situated near the place of appellant within 6 months i.e., 01.03.2011. She specifically denied the allegation that she used to leave the matrimonial home and stayed at her parent's house and hence there was a dispute and panchayat was conducted in the presence of the teachers namely Alexander etc., all are not correct. After transfer, there was no dispute between them as alleged by the appellant and in their blissful life, two female children were born on 14.09.2011 and 05.11.2014.

3.2. She specifically denied the allegation that she refused to offer her help to the appellant to construct the house. She stated that to construct the house, her entire jewels were entrusted with the appellant and he pledged the same in the bank. She also stated that Rs.1,50,000/-



C.M.A(MD)No.661 of 2024

WEB COPY

arrears of the salary was handed over to him to construct the same.

Therefore, according to the respondent, the allegation that she handed over the arrears of the salary of Rs.1,50,000/- to her parents is not correct.

3.3.According to the respondent, the allegation that she picked up quarrel and broken her ATM card is false. Apart from that she specifically denied the allegation that on 21.07.2016, she assaulted the appellant with key. She never caused any assault.

3.4.According to the respondent, she surprisingly received the advocate notice dated 20.08.2016 from the appellant and she suitably sent her reply and requested to lead the matrimonial with the interest of the female child. Thereafter they lived together.

3.5.She also denied the allegation that in the year 2017 she refused to see her father in law and mother in law and asked the appellant not to go to the said house. The appellant himself made the matrimonial disturbance and hence she forced to leave the matrimonial home in the



C.M.A(MD)No.661 of 2024

year 2017. Immediately, after four months, they agreed to have separate residence in the rental house and hence both are led matrimonial life in the rental house upto 2018.

3.6.In the year 2018, once again they are shifted the residence to the house of the 1st floor of the appellant house in order to save rent. From 2018 onwards they were leading the matrimonial life upto 2021. The respondent specifically denied the allegation that in the year 2021 she had made a communication with the third parties furtively. She also specifically denied that on 26.12.2022, she called her uncle's son and with his henchman assaulted the appellant.

3.7.The respondent further specifically denied the allegation made against her that she has not entered the appellant's name in her service record. The appellant name alone has been entered. She also alleged that she never made any phone call to any person as alleged by the appellant but he alone made such calls to the third persons in the night hours and same was questioned by her and in result he picked up a quarrel with her.



C.M.A(MD)No.661 of 2024

WEB COPY

3.8.On 30.12.2022 the Kalayarkovil police officials called her to attend the enquiry on the basis of the complaint made by the appellant's father and in the said enquiry both agreed to live together, but both appellant and his father on 30.04.2023 asked her not to come to their house. They agreed for a compromise and thereafter the respondent frequently went to their house wherein she had kept her household articles. But, the appellant never come.

3.9.She also stated that her parents purchased a property in her name. The appellant and his father asked her not to come to the matrimonial home. Hence, she began construction work to stay with her children in the vacant site purchased in her name by her parents.

3.10.She also stated that the first female child is studying 7th standard and there is a customs that the "*holy communion*" should be received within 10 to 11 years. But the appellant never took any steps and hence she requested him but he refused to conduct the same and hence she conducted the said function. She also stated that in the interest of the welfare of the two female child, she is ready to live with the appellant.



C.M.A(MD)No.661 of 2024

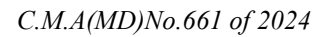
WEB COPY

4. The appellant to prove the case examined himself as PW1 and examined his father as PW2 and his relative as PW3 and PW4 and marked exhibits P1 to P9. The respondent examined herself as RW1 and marked the Ex.R1 to R5.

5.The Learned Trial judge after considering the evidence adduced by the appellant and the respondent dismissed the divorce petition by passing the impugned judgment and decree dated 06.02.2024 finding that the appellant has not made out any case of cruelty and declined to grant divorce. Aggrieved over the same, the appellant filed this Civil Miscellaneous Appeal.

6.The learned counsel for the appellant submitted that the right from the marriage she had frequently left the matrimonial home. She was always interested to live with her parents. Even on so many occasions, the appellant was patient with the separation and reconciled. In spite of that the respondent had never changed her attitude. She never acted as a dutiful wife. She not even made entry of her husband's name in the

10/25



11/25



C.M.A(MD)No.661 of 2024

the appellant without any reasonable cause. Therefore, in all aspect, the ingredients of the section 10 (1) (X) of the Indian Divorce Act are made out to grant divorce and the appellant had suffered both mental and physical cruelty at the hands of the respondent and hence the Learned Trial Judge failed to consider the same in proper manner and therefore he seeks to set aside the judgment and decree of the Learned Trial Judge and pray for allowing the I.D.O.P.No. 170 of 2023 and to grant divorce.

7.The Learned counsel for the respondent submitted that the learned trial judge has considered the all events from the date of the marriage till the date of the filing of divorce petition and held that the alleged act of physical and mental cruelty has not been established. The Learned Trial Judge has specifically held that the appellant failed to prove the physical assault as alleged in the petition said to have happened on two occasions. The Learned Trial judge also found that the appellant's allegation against the respondent that she left the matrimonial home and there was a compromise and then there was a reunion is not substantiated with evidence. The Learned Trial Judge also had taken into consideration of the condonation on the part of the appellant of the incident that took

12/25



C.M.A(MD)No.661 of 2024

WEB COPY

place before the date of the last joining in the year 2017. After 2017, the only dispute alleged by the appellant was that she had been chatting to unknown persons in unusual manner and the same has not been proved. The Learned Judge also on appreciation of the evidence has held that the allegation that her husband was assaulted by the distant relative of the respondent on 26.12.2022 is not proved. The Learned Trial Judge also specifically held that the alleged suicide note produced by the appellant to prove the mental cruelty has not been established by proving the hand writing of the respondent. The Learned Trial Judge also gave a finding that since the appellant has not taken any steps to conduct the function of “*holy communion*” for his elder daughter upto the age of 12 years, the respondent conducted and the same can not be taken against her. Therefore, the learned trial judge correctly appreciated the entire facts of the case and rendered the finding that the appellant never established his case of physical and mental cruelty. Apart from that his case of the desertion has not been accepted by the Learned Trial Judge on the ground that he has filed the petition under section 10 (1) (X) of Indian divorce Act only. Therefore, there was no perversity in the said judgment and hence he seeks to confirm the same.



C.M.A(MD)No.661 of 2024

WEB COPY

8.This court considered rival submission and perused the records and impugned order.

9.The question arises in this civil miscellaneous appeal is that whether the appellant has established his case of mental and physical cruelty in order to get relief of divorce under section 10 (1) (X) of Indian divorce Act.

10. At the outset from the events said to have happened from the date of the marriage till the filing of the divorce petition on 19.06.2023, this court finds no serious matrimonial discord between the appellant and the respondent. Both were interested in their respective parent's welfare. In the said process, they have walked away from their pathway of peaceful matrimonial life, which finally developed into a deep gorge and fighting for their recovery. In between them, their two female children are losing their parental care. Both the appellant and the respondent are teachers and followers of Jesus Christ. Both had counselling before marriage as per the canons of Church. Both had taken a vow in the



C.M.A(MD)No.661 of 2024

church before Jesus Christ that “*God created man and woman in his own image and intended husband and wife to live a life of “one flesh”. The scripture commands not to separate those who God has joined together*”.

The teacher's profession is a noble profession. They are the forerunners of the society. Their life is example for the students. Further tolerance is the substratum of the Christian religion. Further a saying of Lynn:G.Robbing is that “*A happy and successful marriage depends on two good forgivers*”. But, the appellant and the respondent totally acted against the above principle. With this prelude, this court delves into the facts of the case.

10.1. The appellant has come forward with two events to constitute the physical cruelty i.e., on 21.07.2016, the respondent assaulted him with key and hence he sustained injury and taken treatment by taking seven days medical leave. To prove the same, he has not produced any evidence apart from his uncorroborated version. It is his specific case that he had taken seven days medical leave in order to recover from the said injury. In that event, he is duty bound to produce the treatment records and the medical leave certificate. Apart from that his father and his



C.M.A(MD)No.661 of 2024

WEB COPY

mother also not deposed to corroborate the same. Normally, the matrimonial dispute takes place within the four walls but here their specific case is that they lived together in the house of the father of the appellant wherein they have also had residence in portion of the house. Hence, they must have knowledge about the said such bleeding injuries sustained by the appellant. Therefore, they are the best persons to support and corroborate the case of the assault caused to the appellant by the respondent. Hence, this court finds no material to substantiate the said allegation. The trial court also considered the same in proper manner. Therefore, this court is unable to accept the allegation that the respondent assaulted the appellant on 21.07.2016.

10.1.1. According to the appellant on 26.12.2022, the respondent called her relative and assaulted him. But, appellant has not made any complaint. On the other hand, his father made a call to the police officers and the police officers had appeared and instructed her relative to spare him. Thereafter a complaint was made for the purpose of the recording the 100 emergency call to the police officers. In the said complaint it is stated that the relative of the respondent had a wordy quarrel with the



C.M.A(MD)No.661 of 2024

WEB COPY

appellant. There was nothing in the complaint as stated by the appellant that the respondent asked and abetted the attack. Even thereafter there was no action on the part of the appellant. In the said circumstances as per the Ex.P4 and P5, this court finds no material to impute the allegation against the respondent. Therefore, the alleged two physical cruelty made by the appellant have not been proved.

11. The appellant has pleaded four mental cruelty

11.1. Firstly the respondent after her appointment has not entered his name in her service record. But she entered her father name. Subsequently she made entry of his name in the service record. Even as per his deposition, she subsequently changed the name and incorporated his name in her service record. There is no legal requirement to enter the husband name in her service record. But she made it belatedly and thereafter both lived together and are blessed with two female children. In the said circumstances the said past and buried events cannot be treated as mental cruelty.



C.M.A(MD)No.661 of 2024

WEB COPY

11.2. The husband pleaded that she made the accusation against him in the suicide note. The suicide note was marked as Ex.P9. The said suicide note was marked with objection. The respondent specifically denied her hand writing in the said suicide note. No steps were taken to prove her hand writing. Mere marking of the Ex.P9 without proof of hand writing of the respondent, has no value. Even otherwise, the content of the said suicide note does not impute anything against the appellant. The alleged note only contains that she requested his father in law to take care of the child. The appellant made false propaganda against her and hence she requested father in law to take care of her children and not wanted to entrust the custody to the appellant or leave them in any orphanage. She specifically stated that one of the children has neruo problem and hence to avoid any strokes she made such a request and she also allegedly stated that nobody is responsible for her decision. Hence, the same does not amount to mental cruelty as pleaded by the appellant.

11.3. The appellant pleaded that the respondent gave her salary to her parents and sister and never handed over her ATM card to him which amounts to cruelty. Appellant failed to see the universal rule that the



C.M.A(MD)No.661 of 2024

respondent has responsibility to take care of her parents as equal to the appellant's responsibility towards his parents. Apart from that it is duty of the appellant to treat the parents of the respondent like his parents. In addition to that, she is working as a teacher and drawing salary. The appellant cannot poke his nose in her privacy. He is duty bound to maintain her and the children. He should not bother over her income. Therefore, in this aspect also his plea of cruelty cannot be accepted.

11.4. The appellant further pleaded that the respondent has conducted function of “*holy communion*” to the elder daughter without inviting him on 05.02.2023. The respondent specifically pleaded that the said auspicious function should have been conducted before the completion of the age of 12 years. The appellant has not taken any steps and hence she requested to conduct the same. But he refused and therefore she conducted the said function in the church of Arulanathar. It is the duty of the father to participate in the said function even without invitation to bless his own daughter which was held in the village where his marriage was preformed. Tolerance is the tenent of the true Christian. Both Christianity and this court expect tolerance from the appellant as a



C.M.A(MD)No.661 of 2024

WEB COPY

true follower of Jesus Christ and he should have made his presences in the function as a member of the church. Hence the conduct of the appellant without participating in the said function and pleading cruelty amounts to shirking of his responsibility. Therefore, this court also has not accepted that the said act of the respondent to conduct the function without inviting the appellant amounts to the cruelty.

11.5. The father of the appellant made a complaint against the respondent before the police officers to take her house hold articles that had been kept in the house in the 1st floor of his house where in she was resided. Therefore, she was forced to take some of the house hold article and kept the remaining articles in the house. In the said situation she made a construction in the vacant site purchased by her parents in her name in order to give good accommodation to her children. These events cannot be viewed as cruelty.

11.6. The learned trial judge has considered the above all aspects and declined to grant the divorce for the welfare of two female children. This court has no difference of opinion in this aspect. The Hon'ble



C.M.A(MD)No.661 of 2024

Supreme Court in the case of ***Achin Gupta Vs. State of Haryana and another*** reported in ***2024 SCC Online SC 759*** judgment has held as follows :

“In matrimonial disputes the main sufferers are the children. The spouses fight with such venom in their heart that they do not think even for a second that if the marriage would come to an end, then what will be the effect on their children. Divorce plays a very dubious role so far as the upbringing of the children is concerned”

11.7. The marriage is a heavenly union of two souls, two families and sometimes two diverse cultures. There would be couples, meeting each other before their marriage and sort out all their major issues that loomed large and made the marriage proposal work. Then they enter into a blissful marriage. They are also blessed with children. Now their marriage is on the rocks, not because of any major issues, or astronomical issues, but because of the trivial issues. Instead of sitting together and clearing the air, they are not only spoiling their life, but also the life of innocent lamb, the divine gift namely the child. In marriage, often you have to lose an argument in order to win your spouse. The worst pain in



C.M.A(MD)No.661 of 2024

WEB COPY

life is when some one “you know” turns into some one “you knew”. The couple should think twice before parting, for the sake of their child. If the child is deprived of the love of a parent, there is always a danger of the child drifting away from the mainstream. The child needs not only feeding, but a decent standard of living and it has to be protected in every way. The couple should consider to save the marriage and not to break the marriage for the future of their child. They should bury the hatchet and start a new life, otherwise the Court has to find out a way and pass an order to protect the child. How many childless couples are longing to beget a child. The fighting couple should rise above hate and come to terms.

11.8.The learned trial Judge considered act of condonation. From the records, the appellant made an allegation against the petitioner for the incident that took place before 2017. The above all were condoned and thereafter, they lived together for the number of years. In the said circumstances, as held by the Hon'ble Supreme Court, all the allegation made by the appellant as against the respondent is condoned and all the allegation against the respondent by the appellant is trivial abrasion



C.M.A(MD)No.661 of 2024

WEB COPY

considering the status of the parties and the same does not deserve capital punishment for the marriage. The dispute is only trivial and therefore, for the welfare of the children they have to sit together and resolve the same.

11.9. In view of the same, this Court has no reason to interfere with the finding of the learned trial judge. In result, this Court is not inclined to accept the contention of the appellant. Therefore the appeal deserves to be dismissed.

12. Accordingly, this Civil Miscellaneous Appeal is dismissed by confirming the order passed in O.P.No.170 of 2023, dated 06.02.2024, by the learned Family Court, Sivagangai. No Costs.

[P.V.J.] [K.K.R.K.J.]

18.10.2024

NCC : Yes/No

Index : Yes/No

sbh



WEB COPY



C.M.A(MD)No.661 of 2024

To

- 1.The Family Court,
Sivagangai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A(MD)No.661 of 2024

P.VELMURUGAN.J.,

and

K.K.RAMAKRISHNAN.J.,

sbn

C.M.A(MD)No.661 of 2024

18.10.2024