



C.M.A.(MD).Nos.972 of 2023 and 1 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.02.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MR.JUSTICE C.KUMARAPPAN**

C.M.A.(MD).Nos.972 of 2023 and 1 of 2024
and
C.M.P.(MD).Nos.13573, 13575, 13577 of 2023 and 1 of 2024

C.M.A.(MD).No.972 of 2023

S.Shanthini

.. Appellant/Respondent

Vs.

G.Raja

.. Respondent/Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, 1984, praying to set aside the judgment and decree dated 22.11.2022, passed in H.M.O.P.No.32 of 2021, on the file of the Family Court, Tiruchirappalli and allow this appeal.

For Appellant : Mr.R.Senthil Kumar

For Respondent : M/s.S.S.Prabhashini



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C.M.A.(MD).No.1 of 2024

S.Shanthini

.. Appellant/Petitioner

Vs.

G.Raja

.. Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act, 1984, praying to set aside the common judgment and decree dated 22.11.2022, passed in H.M.O.P.No.416 of 2021, on the file of the Family Court, Tiruchirappalli and allow this appeal.

For Appellant : Mr.R.Senthil Kumar

For Respondent : M/s.S.S.Prabhashini

COMMON JUDGMENT

DR.G.JAYACHANDRAN,J.

and

C.KUMARAPPAN,J.

The present Civil Miscellaneous Appeals are filed by the appellant/wife, who is unsuccessful in her petition for restitution of conjugal rights and also suffers a decree of divorce passed in the petition filed by the respondent/husband.



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2. The brief facts of the case is that the respondent and the appellant got married on 11.06.2009 as per Hindu rites and customs. After a long wait of eight years, they were blessed with a child on 21.12.2017. However, thereafter, their matrimonial relationship had faced turmoil leading to their separation on 18.07.2018. The appellant has given a police complaint on 14.07.2020 against her husband, mother-in-law and sisters-in-law. Thereafter, the respondent/husband has filed H.M.O.P.No.32 of 2021 for divorce on the ground of cruelty and desertion. Soon thereafter, the appellant/wife has filed H.M.O.P.No.416 of 2021 seeking for restitution of conjugal rights. Both cases were transferred to the Family Court, Tiruchirappalli and tried together.

3. Before the Family Court, the respondent/husband examined himself as P.W.1, Elagiam, Head Constable of Police was examined as P.W.2 and 20 exhibits were marked on the side of the respondent. Contrarily, the appellant/wife examined herself as R.W.1, her brother, Dinesh as R.W.2, her mother, Vijayakumari as R.W.3 and A.Nalini, Sub Inspector of Police as R.W.4. Besides 14 exhibits were marked on the side of the appellant and Ex.X1 to Ex.X7 were marked as third party documents.



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4. The Family Court, on appreciation of evidence, found that the allegation of cruelty was proved by the conduct of the appellant, who had voluntarily withdrawn from the matrimonial home on 18.07.2018 after a quarrel between her father and her husband and that, alleging demand of dowry and cruelty, filed a complaint arraying all the family members of her husband, which had no proof. Hence, the Family Court allowed the divorce petition filed by the respondent/husband and dismissed the petition for restitution of conjugal rights filed by the appellant/wife. The interlocutory application filed by the appellant for return of srithana articles and jewels came to be dismissed for want of proof.

5. Being aggrieved, C.M.A.(MD).No.972 of 2023 arising out of H.M.O.P.No.32 of 2021, granting decree of divorce and C.M.A.(MD).No.1 of 2024 arising out of H.M.O.P.No.416 of 2021, dismissing the petition for restitution of conjugal rights, have been filed by the appellant/wife.

6. The learned counsel appearing for the appellant/wife contended that the Family Court failed to take note of the fact that the jewels of the appellant were taken away by her mother-in-law and sisters-in-law under the



pretext of keeping them in the bank locker in Chennai and the same was not returned. The learned counsel further submitted that the appellant got conceived with medical assistance after eight years of marriage. This is because, due to the health condition of the respondent/husband, who is an alcohol addict. It is the further contention that the mother-in-law and sisters-in-law were frequently quarrelling with the appellant. They have taken possession of all her jewels and further, demanded money from the parents of the appellant, since the respondent faced loss in his business. It is contended that the above facts, though have been spoken by the witnesses and evidence, the same had not been considered by the Family Court.

7. Per contra, the learned counsel appearing for the respondent/husband would submit that the appellant left the matrimonial home without any reason and made no attempt for reunion, but to pressurise the respondent, she gave a police complaint with frivolous allegations against him and his family members, which was enquired by the All Women Police Station, Srirangam and found to be false. Being harassed mentally and cruelly, the respondent initiated divorce proceedings after waiting for three years and thereafter, the appellant thought fit to file a petition for



restitution of conjugal rights to counter blast the divorce petition and to cover up her voluntary withdrawal from the matrimonial home. The learned counsel by relying upon Ex.P18 and Ex.P19, which is a rough note maintained by the appellant, where she has recorded the receipt of jewels, money and dress from her mother-in-law and the same was admitted in the cross-examination, submitted that the allegation of the appellant that her jewels were taken away by her mother-in-law and sisters-in-law had been belied through the document maintained by the appellant herself. Therefore, the learned counsel submitted that the Family Court on proper appreciation of evidence has come to the conclusion that the marriage has to be dissolved on the ground of cruelty and for unreasonable withdrawal of the appellant from the matrimonial home.

8. Heard the learned counsels and perused the materials available on record. The points for consideration in this appeal are as follows:

(i) Whether the marriage solemnized between the appellant and the respondent on 11.06.2009 has broken due to the voluntary withdrawal of the appellant from 18.07.2018 and whether her withdrawal from the matrimonial relationship is justifiable or would amount to desertion?



WEB COPY (ii) Whether the criminal complaint filed by the appellant against the respondent/husband and his family members amounts to cruelty?

9. The fact that on 17.07.2018, there was quarrel between the respondent and the father of the appellant is not denied and on the next day, the appellant has left the matrimonial home. According to the respondent, while leaving the matrimonial home, she has taken away all her belongings including the jewels and valuable articles, which is denied by the appellant. For neither of these statements, there is no adequate evidence. However, the allegation that 125 sovereigns of jewels were given during the marriage and several lakhs of rupees was spent for the marriage and the same has been left with the custody of the respondent when the appellant left the matrimonial home, requires proof, which is found lacking in this case, coupled with the fact that in Ex.P18 and Ex.P19, the entries made by the appellant herself in her own hand goes to show that till the date of separation, for reasons best known, there was nothing notable to infer the marital relationship facing discord or disturbance. It all appears to have surfaced after the child birth and there is material to infer from the pleadings



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that the respondent was not making sufficient income and facing loss in his business.

10. The appellant has made a specific allegation against the respondent that after being addicted to alcohol, he was not able to maintain his dignity, status and also income. With the above allegation and with allegation of demand of additional dowry of Rs.20,00,000/-, police complaint has been given, which could not be sustained by the appellant, when she, her brother and mother were subjected to cross-examination. The Family Court, having considered the facts cumulatively, had arrived at the conclusion that the conduct of the appellant, who had filed the petition for restitution of conjugal rights after initiation of divorce proceedings by the husband, by filing criminal complaint two years after her separation, gives an indication that the appellant is not interested in the matrimonial life, but to harass her husband and his family members, she has gone to the extent of filing police complaint as well as petition for restitution of conjugal rights without any merit in it.



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11. This Court, after re-appreciating the evidence and after hearing the learned counsels for the respective parties, finds that there is no ground to interfere with the findings of the Family Court. Hence, the Civil Miscellaneous Appeals are dismissed and the common order passed by the Family Court, Tiruchirappalli in H.M.O.P.No.32 of 2021 and H.M.O.P.No.416 of 2021 dated 22.11.2022 is confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(G.J.,J.) (C.K.,J.)
01.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

1.The Family Court,
Tiruchirappalli.

2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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