



C.M.S.A.(MD).No.49 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 27.11.2024

Delivered On : 05.03.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.49 of 2016

and

C.M.P.(MD)No.10832 of 2016

Chithiradevi

... Appellant

Vs.

Veeramani

... Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 28 of Hindu Marriage Act r/w. 100 of C.P.C., to set aside the judgment and decree passed in C.M.A.No.4 of 2013 on the file of the learned Additional District Judge, Dindigul dated 20.06.2016 wherein reversed the order passed by the lower Court in H.M.O.P.No.10 of 2005 on the file of the learned Principal Sub Judge, Dindigul, dated 11.12.2012.

For Appellant

: No Appearance

For Respondent

: Mr.N.Marimuthu

For Mr.A.Chandrakumar



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JUDGMENT

The Civil Miscellaneous Second Appeal has been filed to set aside the judgment and decree passed in C.M.A.No.4 of 2013 on the file of the learned Additional District Judge, Dindigul dated 20.06.2016 which reversed the order passed in H.M.O.P.No.10 of 2005 on the file of the learned Principal Sub Judge, Dindigul, dated 11.12.2012.

2.For the sake of convenience, the parties are addressed herein as per the rank in H.M.O.P.No.10 of 2005.

3.The case of the petitioner in H.M.O.P.No.10 of 2005 is as follows:-

(i)The petitioner husband has filed a petition for divorce under Sections 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act, 1955. The petitioner married the respondent on 10.09.2000 at Kodai road as per Hindu Rites and customs. After marriage, they commenced their matrimonial life in matrimonial home belonging to the petitioner for six months. Out of this matrimony, the petitioner and the respondent are



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blessed with girl child namely Harithamalini, who was 3½ years old at the time of filing the H.M.O.P. At the time of marriage, the respondent's parents gave her 5 sovereigns of gold ornaments and home appliances worth about Rs.5,000/-. The respondent resided in the house of the petitioner for six months only and thereafter, she voluntarily left the companionship of the petitioner on her own accord and went away in the year 2001 from her matrimonial home and thereafter, she is residing separately. She has taken away all her belongings, while leaving her matrimonial home. All the steps taken by the petitioner personally and through friends and relatives to bring back the respondent to lead a peaceful matrimonial life proved futile.

(ii) Under such circumstances, the respondent and her relatives engaged some rowdy elements for attacking the petitioner and his family members and threatened the petitioner with life threat. That apart the respondent maliciously kept trying to get the property from the family of the petitioner causing untold mental agony to the petitioner. The continuous activities of the respondent and her relatives have augmented the mental agony of the petitioner. The respondent gave a complaint on



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23.11.2003 before the Dindigul Police station against the petitioner and the petitioner had lost matrimonial co-habitation with the respondent for more than 2½ years. At the instance of the respondent, the police registered a complaint on 23.11.2003, as the result of which, the petitioner was dismissed from the Government employment, resulting in untold mental and physical difficulty to the petitioner. The respondent had deserted the petitioner for more than two years. Hence, this petition for divorce was filed seeking to dissolve the marriage between the petitioner with the respondent on the ground of desertion on the part of the respondent.

4.The case of the respondent in H.M.O.P.No.10 of 2005 is as follows:-

(i)The date of marriage and the marriage between the petitioner and respondent has been admitted by the respondent wife. However, the respondent claimed that at the time of marriage, her parents adorned her with 15 sovereigns of gold ornaments and the petitioner with 5 sovereigns of gold ornaments and gave home appliances worth Rs. 50,000/-. After marriage, the petitioner and the respondent resided for

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two months in a house behind Dindigul Railway Station from where the respondent left for her job every day to Trichy. On the same time, the petitioner was working at Karur. In the meanwhile, the petitioner was transferred from Karur to Madurai. Hence, he directed the respondent to stay at Trichy. On 24.06.2001, a girl child namely Harithamalini was born to the respondent through this matrimony. By this time, the petitioner was transferred again from Madurai to Trichy on 16.11.2001. After which, both of them resided in the house belonging to Saroja, wife of Devaraj, Trichy by executing a rental agreement and the same is marked as Ex.R2. The respondent gave an amount of Rs.10,000/- as advance for the rental house.

(ii) In the year 2003, both the respondent and the petitioner were transferred to Dindigul and they started living in the house belonging to the petitioner. The petitioner had availed a housing loan of Rs.10,000/- from a Society at Kodai road. Due to the non payment of the same, the loan amount had accumulated along with interest to the tune of Rs. 40,000/-. He took an additional loan from his office Society and satisfied the loan availed from Kodai Road Society. Apart from that he had availed



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all possible loans from his salary. As the result of which, he compelled the respondent to pay and close the loans availed by him. As the result of which, the minor skirmishes evolved between the petitioner and respondent very often. While so, on 04.05.2004, the petitioner was removed from service. Presently he has rejoined service and the respondent is working in Trichy and the daughter of the petitioner and the respondent is studying in a School at Trichy. The entire household and education expenditure was borne by the respondent alone. The petitioner never contributed any amount towards his family.

(iii) During November 2009, few of the common relatives namely Tamilarasi, Pandiyan and Sankaran initiated conciliation talks between the petitioner and the respondent. The respondent was willing to rejoin the petitioner along her daughter. But on that particular day, the respondent's brother was out of station and due to the delay for him to return back home, the petitioner without concluding the conciliation efforts, went back to his house. During that compromise, he disclosed that he had a total loan of Rs.11,00,000/- and that has to be disbursed and closed by the respondent if she is willing to re-join him. The point of re-



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conciliation would be fructified only on satisfaction of the said condition.

Even during the pendency of H.M.O.P. petition very often the petitioner visited the respondent's Trichy house for receiving money. The respondent had never conducted cruelty as against the petitioner at any point of time despite the petitioner, his sister and sister's husband abusing her physically and mentally. Even after the filing of this petition, the petitioner and the respondent were living together whenever possible until the petitioner was transferred to Perambalur on promotion. The respondent is always willing to re-join the petitioner and pressed for dismissal and hence, sought for dismissal of the H.M.O.P.

5.The learned Trial Court has framed three issues. Three witnesses were examined and two documents were marked on the side of the petitioner. Two witnesses was examined and three documents were marked on the side of the respondent. The learned Trial Court at the first instance, proceeded to decide whether the petitioner is living separately from the respondent since 2001. Both the petitioner and the respondents are working in Police Department. Ex.R1 is the application for transfer made by the petitioner seeking transfer from Madurai to Trichy and the



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same has been accepted by the petitioner. The learned Trial Court has observed that while the respondent was serving as a Police Constable in Trichy Police Station, the petitioner has preferred a transfer application from Madurai to Trichy. At the time of evidence and cross examination, the petitioner admitted that he lived with the respondent at Trichy. The rental house advance receipt has been marked as Ex.R2.

6. Thereafter, the learned Trial Court proceeded to record that both the petitioner and the respondent were transferred in the year 2003 to Dindigul, wherein both of them were living together in the house of the petitioner's sister and the same has been admitted by the petitioner in his cross examination. On the basis of the various admissions made by the petitioner as discussed supra, the learned Trial Court decided that the petitioner and the respondent lived together from 2001 to 2003. Thus, the learned Trial Court concluded that the petitioner's contention that the petitioner and the respondent lived together only for six months as false. Even in the year 2003, after attending a training for two months, both of them lived together by taking another house for rent. Even while living together since they were working in Police Department, both of them



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were habitual in lodging complaint against each other and the same could be revealed from the evidence of P.W.1. One of such complaints lodged by the respondent against the petitioner has been marked as Ex.R3.

7.That apart the respondent has also admitted that it is only on her complaint, made during the year 2004, the petitioner was removed from service and thereafter, the same was taken up before the Madras High Court by the petitioner by filing W.P.(MD)No.182 of 2005 and he was reinstated vide an order dated 24.04.2009. The learned Trial Court observed that the crux of the issue between the petitioner and the respondent is the petitioner's money issues and his attitude of compelling the respondent to disburse his loans.

8.Having observed so the learned Trial Court proceeded to further conclude that the petitioner and the respondent had been living together from 2001 to 2003 and even after 2003. However, there had been issues in matrimonial due to the incorrigible debts incurred by the petitioner and his attitude of compelling the respondent to disburse his loans. Only after 2003, the petitioner and the respondent are living separately in their



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respective place of job and the reasons for the failure of reconciliation is nothing but the petitioner's condition that reconciliation is subject to the disbursement of loan by his wife.

9.On the basis of the evidence and documents available on record and arguments of the respective parties, the learned Trial Court concluded that though the respondent had lodged few complaints against the petitioner on certain occasions, all those complaints were lodged only whenever unreasonable conflicts had arisen between the petitioner and the respondent, as the result of his money issues. That apart the question of desertion between the petitioner and the respondent will never arise and cruelty as contended by the petitioner is not proved duly in accordance with law. On that basis, The learned Trial Court dismissed the petition for divorce.

10.The respondent husband has filed an appeal in C.M.A.No.4 of 2013 before the learned Additional District Judge, Dindigul. The learned Appellate Court proceeded to deal with the petition for divorce on three grounds namely:-

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(i)The respondent co-habitated with the petitioner only for six months. During the year 2001, she left her matrimonial home along with her belongings voluntarily and thereafter, she is living separately.

(ii)The respondent wife failed to perform her duties towards her husband went to the extent of engaging rowdy elements and her relatives to attack the petitioner and his family members to the extent of giving life threat to them and the respondent consistently keep trying to get the property of the petitioner's family by inflicting mental abuse on him.

(iii)The respondent gave a police complaint against the petitioner on 23.11.2013, as the result of which, he was dismissed from Government service causing untold mental agony.

11.However, the learned Appellate Court proceeded to observe that on careful analysis of evidence, the petitioner during his cross examination clearly admitted that they have co-habitated in separate residence upto 2003. Apart from two months of training, they started living together in a house behind his sister's house at Angammal colony. The learned first Appellate Court categorically recorded that the petitioner had co-habitated with the respondent till October 2003 and



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even thereafter and concluded that the petitioner has falsely pleaded in the petition as if the respondent had left matrimonial as early as in the year 2001 itself. Therefore, it was concluded that the contention of the petitioner that the respondent wife left the matrimonial home in 2001 itself failing to discharge her duties as wife, is proved false by his own admission in the cross examination.

12.However, while dealing with the allegation as to the engagement of the rowdy elements and relatives to attack the petitioner and his family members, the petitioner failed to make clear submissions as to the date of alleged events of her attack by the respondent and her relatives and negated the said allegation that without any corroborating oral and documentary evidence, it is insufficient to hold that the respondent is responsible for the alleged attack on the petitioner and the same cannot be taken into consideration and on that basis, negated the same. However, the respondent herself admitted the factum of giving a police complaint against him on 23.11.2003. As the result of which, the petitioner was removed from service and thereafter, reinstated in service on the order of this Court.

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13. In view of the same, the learned first Appellate Court concluded that the same would amount to mental cruelty, since the said complaint culminated in the removal of the petitioner from the Government service. The learned first Appellate Court relied on the order passed by this Court in W.P.(MD)No.182 of 2005 dated 24.04.2009, wherein it has been observed that the punishment of removal from service was imposed on the petitioner by the Department only on the false complaint of the wife lodged as against the petitioner and proceeded to hold that lodging of false complaint would amount to mental cruelty. In that ground, the petitioner was entitled for divorce, though the learned first Appellate Court negated the ground of desertion upheld the ground of cruelty and granted divorce to the petitioner.

14. Assailing the same, the appellant has filed the Civil Miscellaneous Second Appeal on the following substantial questions of law:-

'(i) Whether the lower Appellate Court is right in reversed the order passed by the learned Trial Court without



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assigning any proper reasons, warrants interference?

(ii) Whether the lower Appellate Court is decreeing the relief of divorce and when the appellant and the respondent lived together till 2003 and they got female child, warrants interference?

(iii) Whether the lower Appellate Court is right in reversed the order of the learned Trial Court by following the provisions contemplated under Section 13(1)(i-b) of Hindu Marriage Act, 1955 warrants interference?'

15.The question to be decided in this case is as to whether the first Appellate Court is justified in reversing the order of dismissal of H.M.O.P.No.10 of 2005 passed by the learned Trial Court. No doubt the petitioner had filed a petition for divorce under Section 13(1)(i-a) and 13(1)(i-b) of Hindu Marriage Act, 1955 on the grounds of cruelty and desertion.

16.However, a careful reading of the petition in H.M.O.P. would reveal that the divorce has been sought only on the ground of desertion. That apart the petitioner has made three allegations as follows:-

(I)The respondent voluntarily left the matrimonial home in the year



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2001 and they have lived together as husband and wife for a short span of six months.

(ii)The petitioner suffered untold mental and physical abuse in the hands of the respondent and the respondent went to the level of engaging rowdy elements and relatives to attack the petitioner and his family members by subjecting them to life threat.

(iii)The atrocious activity of the respondent went to the extent of trying to get the properties of the petitioner's family by conducting herself to the maximum of atrocities subjecting the petitioner and his family to mental cruelty.

17.On 23.11.2003, the respondent lodged a complaint as against the petitioner and as the result of which, he was removed from Government service causing untold grief. Both the petitioner husband and the respondent wife are employees of Police Department. After careful perusal of the materials available on record and the evidence deposed by the witnesses examined on either side, both the learned Trial Court and the learned first Appellate Court had negated the petitioner's allegation of the respondent having deserted him as early as in the year



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2001 within six months from the date of marriage.

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18. On the basis of the evidence and documents marked through various witnesses, both the lower Courts concurrently held that the petitioner and the respondent were living together till 2003 and even thereafter, on all period of time, conducive to the requirements of their employment in the Police department. Since both the petitioner and the respondent were employed in the Police Department demanding timeless duty and since both of them were employed in different destinations in different point of time, despite having served in different destinations from the first instance of marriage till 2003 and even thereafter, during all possible times, they had co-habitated together including Trichy and Dindigul. That apart during 2003, for a few months, they worked together in Dindigul.

19. However, it has been established through the evidence of the witnesses that the petitioner had incurred debt continuously to the tune of Rs.10,00,000/- and from the first instance of their marriage, the matrimonial issues crept into between husband and wife only because of

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continuous demand of the petitioner compelling the respondent to pay his debts out of her income. It has become evident from the evidence that even house advance for the rental matrimonial home was given by the respondent wife and it is only the respondent, who is taking care of their daughter Harithamalini and she is studying at a matriculation school at Trichy. The learned Trial Court has categorically observed that the cause of various issues and disagreements between the couple had always been money issues and the attitude of the petitioner compelling the respondent to disburse his loans. The learned Trial Court on the basis of evidence had categorically observed that every problem, which culminated in lodging of complaint either by the petitioner or by the respondent had arisen only due to the said attitude of the petitioner. The learned Trial Court has also appropriately recorded the fact that since both of them are employed in the police department and since they were conducive to the atmosphere of Police Department, for every issue, both of them lodged complaints against each other.

20. That apart the petitioner has also made allegation that the respondent has engaged rowdy elements and relatives to attack the



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petitioner and his family and went to the extent of grabbing his family property and miserably the entire allegation failed the test of evidence before the learned Trial Court and the same has been duly acknowledged by the learned first Appellate Court that the entire allegation of harassment by the respondent are bald allegations.

21. In addition to that, even after the filing of the H.M.O.P., it could be understood from the evidence and pleadings of the respondent that the petitioner used to visit the respondent and her daughter very often and received money from his wife and the respondent has always expressed her willingness to live with the petitioner and she has categorically deposed that she is not willing for a divorce. However, the only admission which went against the respondent wife is that she admitted in the cross examination as to the factum of lodging a complaint against her husband on 23.11.20003, which culminated in the removal of petitioner from his service in Police Department. However, later he was reinstated into the service of Police Department by the order of this Court in W.P. (MD)No.182 of 2005 dated 24.04.2009. Only on the basis of fact that lodging false complaint as against the husband would amount to mental



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cruelty, the learned first Appellate Court though negated the ground of desertion, came forward to grant divorce reversing the finding of the learned Trial Court on the ground of cruelty.

22.It is pertinent to mention her that though the petitioner has filed a petition for divorce under Section 13(1)(i-a) and 13(1)(i-b) of Hindu Marriage Act, 1955, no doubt pleadings in H.M.O.P.No.10 of 2005 would reveal that the divorce has been sought for only on the ground of desertion. None of allegations made out by the petitioner as against the respondent in the pleadings is supported by date of occurrence except the date of lodging of a criminal complaint on 23.11.2003. However, having lived with the respondent and daughter continuously from 2001 to 2003 and thereafter and having recorded the same, the learned first Appellate Court proceeded to grant divorce on the ground of cruelty on the sole ground that the complaint lodged by the respondent on 23.11.2003 was admitted by her. The learned first Appellate Court lost sight in the fact that the said complaint could never ever be a false complaint for the reason that the same has been lodged by her out of a matrimonial dispute, which has arisen between the petitioner and the respondent. Very keenly



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going through the evidence of both the parties i.e, the petitioner and the respondent, it could be understood that lodging complaint by both the petitioner and the respondent as against each other has been habitual since both of them are police personals serving the police department and the stand of the learned first Appellate Court of concluding that lodging a criminal complaint would amount of mental abuse, cruelty would not be correct in the facts and circumstances of this case.

23.On that basis, I concluded that the first Appellate Court ought not to have reversed the findings of the learned Trial Court when the evidence and materials on record are fully in favour of the respondent who is always willing to live with husband for the sake of herself and her daughter.

24.In view of the above, this Court is inclined to set aside the judgment and decree passed in C.M.A.No.4 of 2013 on the file of the learned Additional District Judge, Dindigul dated 20.06.2016 and confirm the order passed in H.M.O.P.No.10 of 2005 on the file of the learned Principal Sub Judge, Dindigul, dated 11.12.2012.

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25. Accordingly, the Civil Miscellaneous Second Appeal stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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

To

1. The Additional District Judge, Dindigul.
2. The Principal District Judge, Dindigul.
3. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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L.VICTORIA GOWRI, J.

Mrn

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