



C.M.A.(MD).No.622 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2024

CORAM

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

C.M.A.(MD).No.622 of 2018

Vigneshwaran

.. Appellant/Petitioner

Vs.

Lakshmi

.. Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act r/w Order 41 Rule 1 of Civil Procedure Code, praying to call for the records in common judgment and decreetal order dated 07.06.2017 passed in H.M.O.P.No.211 of 2014 by the learned Family Judge, Srivilliputtur and to set aside the same.

For Appellant : M/s.S.Mahalakshmi

For Respondent : Mr.R.Ragavendran



C.M.A.(MD).No.622 of 2018

JUDGMENT

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

This Civil Miscellaneous Appeal is filed by the husband, who was unsuccessful in dissolving the marriage through H.M.O.P.No.211 of 2014 on the file of the Family Court, Srivilliputtur.

2. The case of the appellant is that he married the respondent on 10.07.2013 and they both lived together hardly for six months. The respondent did not discharge her duty as a wife and assist him in his daily routine. When she was questioned about the same, she started scolding him in filthy language and there was quarrel between them leading to registration of a criminal complaint. Meanwhile, the respondent also had her own way of life by staying away from the matrimonial home. In this regard, All Women Police Station, Srivilliputtur had enquired the complaint on 03.10.2014. They found that the allegation of the respondent is false and closed the complaint as 'mistake of fact'. Therefore, on the ground of cruelty, divorce was sought for by the appellant.



C.M.A.(MD).No.622 of 2018

3. The same was opposed by the respondent stating that the allegations of not behaving as a dutiful wife is false. The parents of the appellant used to grab her money and property and they used to abuse her for not bearing a child. She was also physically attacked besides demand of dowry.

4. The parties mounted the witness box and placed evidence in their support. The marriage between the parties is not disputed and also supported by Ex.P1, marriage invitation and Ex.P2, marriage photograph. The medical report of the respondent is marked as Ex.P3. The appellant, who was examined as P.W.1, had deposed that the respondent had withdrawn the matrimonial company and living separately for 2½ years without any reason. Relying upon the medical examination report, Ex.P3, undergoing fibrous tissues and lymphocytes, it was contended that apart from her behaviour, her health condition also does not indicate that she is fit to bear a child. Per contra, the respondent examined herself as R.W.1 and her brother Mayandi was examined as R.W.2.



C.M.A.(MD).No.622 of 2018

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5. The Family Court, after considering the materials placed on record, had dismissed the divorce petition. Being aggrieved, the present Civil Miscellaneous Appeal is filed.

6. When the matter was taken up for final hearing, this Court thought fit that since the issue falls within a narrow compass, it may be appropriate to have a personal hearing of the parties to know whether there is any possibility of re-union. Accordingly, the parties were present on 08.01.2024. This Court interacted with them and found that there is a wide gap between the parties.

7. The learned counsel appearing for the appellant submitted that pending disposal of the divorce petition, after closure of the complaint given by the respondent before the All Women Police Station, Srivilliputtur, the respondent initiated proceedings under Section 156(3) of CrPC before the learned Judicial Magistrate No.II, Srivilliputtur and pursuant to her complaint, a case was registered against the appellant and his family



C.M.A.(MD).No.622 of 2018

members. Based on the final report, the learned Judicial Magistrate No.II, Srivilliputtur took cognizance of the offence in C.C.No.8 of 2015. After full trial, the appellant and his family members were acquitted vide judgment dated 28.11.2019 subsequent to the disposal of H.M.O.P.No.211 of 2014 on 07.06.2017. Apart from other grounds, the learned counsel submitted that the Family Court failed to take note of the fact that the respondent has approached the Police with frivolous allegations and despite the Police on enquiry found that it is frivolous and closed the complaint, the respondent initiated criminal proceedings, causing the appellant and his family members a great hardship and an ordeal of criminal trial. After five years, the appellant and his family members earned a verdict of acquittal. This *per se* tantamounts to cruelty and should be taken into account for dissolving the marriage.

8. The learned counsel appearing for the respondent submitted that pending the appeal, the appellant has married another lady and has begotten two children. This Court finds that the above submission made by the learned counsel for the respondent may not have any bearing on this Court



C.M.A.(MD).No.622 of 2018

to decide this appeal and if at all the statement is true, the respondent has to work out the remedy elsewhere.

9. As far as the point for consideration whether there was any cruelty on the part of the respondent warranting dissolution of the marriage, the learned counsel for the appellant has put forth the following reasons:

- i) The couple lived together hardly for six months,
- ii) The respondent/wife withdrew from the matrimonial relationship on her own and living separately since 2015 and
- iii) She filed a criminal complaint with false allegations, which later ended in acquittal.

10. This Court, though does not find any material to attribute whole responsibility on the respondent for withdrawal from the matrimonial home, her criminal complaint and prosecuting the husband and his family members tantamounts to cruelty. Further, long separation of more than nine years coupled with the fact that they lived together as husband and wife only for six months, clearly shows that the respondent herein had no inclination to



C.M.A.(MD).No.622 of 2018

live with the appellant after her withdrawal from the matrimonial home. In the said circumstances, keeping the marital bond only on paper will be a farce exercise. Hence, the order passed by the Family Court, Srivilliputtur in H.M.O.P.No.211 of 2014 dated 07.06.2017 is set aside. Accordingly, the Civil Miscellaneous Appeal is allowed and the marriage held between the appellant and the respondent on 10.07.2013 is hereby dissolved. There shall be no order as to costs.

(G.J.,J.) (C.K.,J.)
10.01.2024

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

To

1.The Family Court,
Srivilliputtur.

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



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C.M.A.(MD).No.622 of 2018

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C.M.A.(MD).No.622 of 2018

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