



C.M.A.(MD).No.1182 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :11.09.2024

CORAM

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

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R.Aarthi

... Appellant

Vs.

R.Ramesh Kumar

... Respondent

Prayer:- Civil Miscellaneous Appeal is filed under Section 19(1) of the Family Courts Act, 1984, to set aside order and decree in H.M.O.P.No.38 of 2014 dated 13.06.2017 on the file of the learned Family Court, Madurai District.

For Appellant : Mr.S.Moorthy

For Respondent : Mr.B.Senthilkumar

J U D G M E N T

(Judgment of the Court was made by **K.K.RAMAKRISHNAN.J.,**)

The Wife is the appellant and filed this appeal against the dismissal of her divorce petition in H.M.O.P.No.38 of 2014 on the file of the Family Court, Madurai.



2.The appellant married the respondent on 08.09.1995. Their marriage took place at Rajamuthaiah Mandram, Madurai. During the wedlock, a male child was born on 22.06.1996. At the time of the marriage, the respondent was working as a technical sales representative of Broke Bond Lipton India Ltd., and earned monthly salary of Rs.15,000/- at Chennai. After the marriage, both were living at Chennai. According to the appellant, the respondent had been continuously harassing her and caused mental torture by demanding more dowry. He also used to consume alcohol and beat her. Since she was hailing from a respectable family, she tolerated all physical torture and mental agony fearing societal rejection. According to the appellant, he not only caused the above harassment and torture, he frequently switched over to various companies by changing the matrimonial home. Finally he had joined a job at Madurai and he continued his merciless act of assaulting her under the influence alcohol and caused injuries in the presence of the child. He never looked after the family and not even met the educational expenditure of the only male child. Finally, he deserted the appellant in the year October 2011 and refused to reunite despite the mediation made by the family elders. Therefore, she filed the HMOP No. 38 of 2014 on the file of the Family Court, Madurai to dissolve the marriage solemnized between the appellant and the respondent on 08.09.1985 on the ground of cruelty and desertion.



3.The respondent filed a counter and he specifically denied the allegation made against him and he pleaded that his family was lower middle class family.

The appellant's height is more than 6.1 and hence her family decided to arrange the marriage with him on the account of the matching of the height. She is hailing from a affluent family and only in the above circumstances, they decided to arrange the marriage with his family. At the time of the marriage, his father was working as a salesman in Lipton India Ltd., and he was working as a sales representative of the Hindustan Lever Ltd., having his head office at Chennai. He and his wife were living in Chennai after marriage upto January 1998. He had been continuously shifting his working place to the various cities of Tamil Nadu by joining different companies as he was eager to earn fat salary. Finally, he was appointed as a sales manager for 16 districts with head quarters at Madurai. Therefore, the allegation made against him in the divorce petition that he was jobless and depending upon the income of the family members of the appellant is not correct. He also specifically denied the allegation that he demanded dowry and he assaulted the appellant under the influence of alcohol. He earned sufficiently through his job and managed his family. He never received any amount from the family members of the wife at any point of time. She herself left the matrimonial home on 27.05.2012 without any cause and without his consent and filed this petition with false allegation. The respondent



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is a beautician and she started Varma Centre at her own in the name of Ayushyam at Madurai and also had a branch at Chennai and she has been visiting both Chennai and Madurai. She has good income. Therefore, she changed her attitude and filed this petition on the ill advice of her mother, after the demise of his father in law. Till date there was no conflict of interest between them and there is no matrimonial discord between them. He was a good husband and good father. He alone had been meeting out the educational expenses of his son. She filed the petition without any cause of action and hence he seeks to dismiss the petition.

4.To prove the case, appellant examined herself as P.W.1 and marked Exs.P1 to P4 namely marriage invitation, marriage photograph, birth certificate, family card and the respondent examined himself as RW1 and marked Exs.R1 to R16.

5.The Learned Trial Judge after considering both the oral and documentary evidence adduced on the side of the both parties, dismissed the petition by passing the impugned order dated 13.06.2017. Aggrieved over the same, the appellant has filed this appeal to set aside the impugned judgment and decree and seeks to grant divorce.



6.The learned counsel for the appellant submitted that, the learned trial judge failed to consider the cruelty meted out to the appellant at the hands of the respondent in proper manner and erroneously dismissed the divorce petition filed by the appellant. The appellant specifically deposed that she had been undergoing continuous harassment and mental torture and also physical assault at the hands of respondent under the influence of the alcohol. Merely because no police complaints were made against the respondent, the court below ought not to have dismissed the petition holding that there was no corroboratory evidence. In the case of the matrimonial dispute, there was no legal requirement to produce corroborative evidence to prove the allegation. The learned counsel also submitted that the appellant had been tolerating all the harassment made by the respondent for the welfare of the child and the respondent neglected her and her son without any reason and therefore, she was forced to file the divorce petition. The learned trial judge has not considered the above aspects and erroneously dismissed the petition. Therefore, he seeks to set aside the judgment and he prays for decree for divorce and he also placed reliance on the judgment of the Hon'ble Supreme Court reported in **2023 INSC 814**.

7.The Learned counsel for the respondent submitted that there was no cause of action to seek divorce on the ground of desertion and even as per her



evidence she left the matrimonial home only in the month October 2013 and she filed this petition on 20.01.2014 and therefore the learned trial judge correctly dismissed the petition sought on the ground of desertion. Her specific case that the respondent had continuously caused cruelty by demanding dowry, assaulting her under the influence of alcohol and leading life without taking care of her and her son and he remained jobless and failed to maintain the family by providing the expenditure are all false. To prove said allegations, no evidence was adduced by her. The learned trial judge correctly appreciated the said facts and dismissed the petition in accordance with law. Even from 2013, he had been continuously taking steps to resume the life through mediation, but due to her arrogance of wealth, she refused to live with him. But, he is waiting for the reunion in the interest of the child. Therefore he seeks to dismiss the petition.

8.This court considered the rival submission made by the both learned counsel appearing on behalf of the appellant and the respondent and perused the records and the impugned judgment and the various precedents relied upon by them.

9. From the records, it is clear that the appellant was hailing from a wealthy family. Her height is more than 6.1. There was some difficulty in



getting suitable bridegroom with matching height. Therefore, her family had decided to arrange the marriage from a lower middle class family namely the respondent family. The respondent family is a lower middle class family. But, the respondent was working as a sales representative in the Hindustan Lever at Chennai on the date of the marriage i.e., on 08.09.1995 and earning more than Rs.15,000/-. Therefore, they were living at Chennai upto 1998. In the meantime, a male child was born on 22.06.1996. It is true that he shifted his job to various companies from February 1998 to October 2013. According to the respondent, he had shifted his job from one company to another expecting high salary. Finally, he had landed in a job at Madurai based company and took a house near the house of the appellant. From the sequence of the events deposed by the appellant and the narration of the events made by the respondent, this Court is not able to find any serious dispute between them which leads to such nature of the matrimonial discord to presume their marriage life cannot be reconciled. The appellant came forward with a case of cruelty. She made allegation that the respondent made continuous harassment by demanding dowry. To prove the same, no evidence was adduced. Similarly, she made allegation that the respondent had assaulted her under the influence of alcohol. To prove the same also no evidence was adduced. Her specific case is that in order to maintain the matrimonial peace, she has not preferred any complaint.



This Court is unable to accept the said explanation on the ground that her specific case is physical assault, that too under the influence of alcohol. In the said circumstances without any corroborative evidence, this Court cannot accept the allegation of physical assault. It is not necessary to prove the allegation by way of the independent and corroborative evidence, at the same time, when serious allegation of physical assault is made, it is duty of the appellant atleast to examine her son to prove to some extent. Throwing allegation against the respondent without any evidence or circumstances to infer the same, this Court is unable to differ with the finding of the learned trial judge that the case of the cruelty has not been proved in accordance with law. The respondent deposed that he never asked to bring any amount from his in laws and never received the same and he alone took care of the family. Even to take the house on lease at Madurai, his father alone contributed the lease amount as admitted by the appellant. He managed the family with his income. After the accident in the month of October 2013, she left the matrimonial home on her own volition and never returned. Since, she was earning more through her business, she was not feeling comfortable and filed this petition without cause of action. Nowadays, it has become the habit to file frivolous divorce petitions without any reason and without any material to constitute the ingredients stated in the section 13 (1) of the Hindu Marriage Act 1955. In view



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of the absence of the any evidence, to constitute the cruelty on the part of the respondent, this court is not inclined to accept the argument of the learned counsel for the appellant and finds no perversity or error in the finding of the learned trial judge in dismissing the divorce petition filed by the appellant. The precedent relied upon by the appellant counsel reported in **2023 INSC 814** in the case of **Smt.Roopa Soni vs Kamalnarayan Soni** has no application to the present case for reason that in the present case, desertion ground is not made out on account of the filing of the divorce petition within 2 years (*i.e., from the date of the separation October 2013 and filing the petition 20.01.2014*).

10. Accordingly, this civil miscellaneous appeal is dismissed and the order and decree passed in H.M.O.P.No.38 of 2014 dated 13.06.2017 by the learned Family Court, Madurai District, is hereby confirmed. There shall be no order to cost.

[P.V.J.] [K.K.R.K.,J.]
11.09.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1. The Family Court,
Madurai District.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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