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1

C.M.A.(MD)NO.1094 OF 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

AND

THE HON'BLE MR.JUSTICE P.VADAMALAI

C.M.A(MD)Nos.1094 & 1183 of 2018 &
C.M.P.(MD)Nos.11191 of 2018 & 4643 of 2020

C.M.A.(MD)No.1094 of 2018

M.Franslin Raja @ Franslin Sahaya M.Sathish
... Appellant / Respondent

Vs.

Z.Stefi Grace @ Sony ... Respondent / Petitioner

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, to allow the C.M.A with cost by setting aside the fair and final order dated 30.08.2018 in I.D.O.P.No.195 of 2018(I.D.O.P. No.234 of 2016 on the file of the District Court, Nagercoil) on the file of the District Judge, Family Court, Kanyakumari District at Nagercoil.

For Appellant : Mr.A.Sivaji

For Respondent : Mr.Dinesh Hari Sudarsan

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C.M.A.(MD)No.1094 of 2018

WEB COPY Z.Stefi Grace @ Sony

... Appellant / Petitioner

Vs.

M.Franslin Raja @ Franslin Sahaya M.Sathish

... Respondent / Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, to set aside the order dated 30.08.2018 made in I.D.O.P.No. 195 of 2018 on the file of the District Judge, Family Court, Kanyakumari Division at Nagercoil with regard to visitation right.

For Appellant : Mr.Dinesh Hari Sudarsan

For Respondent : Mr.A.Sivaji

* * *

COMMON JUDGMENT

Heard both sides.

2. M.Franslin Raja @ Franslin Sahaya M.Sathish got married to Z.Stefi Grace @ Sony on 04.02.2009 as per Christian rites and customs at Holy Family Church, Carmel Nagar, Nagercoil. Both are software engineers. Their marital relationship came under strain. The wife left the matrimonial home in October 2011 and returned to her parents' home. An



unpleasant incident took place on 14.11.2012 leading to registration of Crime No.24 of 2012 on the file of the All Women police station, Nagercoil.

3. Subsequently, the matter was compromised and the parties appear to have reunited. Differences cropped up again and the wife left the matrimonial home on 19.06.2016. She thereafter filed I.D.O.P.No.234 of 2016 on the file of the District Court, Nagercoil. It was later transferred to the Family Court, Kanyakumari Division at Nagercoil and renumbered as I.D.O.P.No.195 of 2018. The husband filed counter affidavit denying the allegations of the wife. Based on rival pleadings, issues were framed. The wife examined herself as P.W.1 and her father was examined as P.W.2. Ex.P.1 to Ex.P.5 were marked. The husband examined himself as R.W.1. He examined his father as R.W.2. Ex.R1 to Ex.R22 were marked. After considering the evidence on either side, the trial Court vide order dated 30.08.2018 granted divorce. It also conferred visitation rights in favour of the husband. The IDOP was allowed in the following terms:-

“i) the respondent is permitted to see his minor son on every 2nd and 4th Sunday on any one of the places admitted by both parties. Further the respondent is permitted to take



custody of the minor son for 10 days during vacation holidays and after expiry of 10 days, hand over the minor child to the petitioner.

ii) the respondent should not disturb or disrupt the education of the minor in the custody of the petitioner at any point of time.

iii) the respondent will be given liberty to share the educational expenses of the minor son along with the petitioner.

iv) the respondent on his own accord contribute anything to the minor son and the petitioner should not prohibit the respondent from giving the child anything for his comfort and pleasant living.”

4. Aggrieved by the grant of divorce, the husband filed C.M.A. (MD)No.1094 of 2018. Aggrieved by the grant of visitation rights, the wife filed C.M.A.(MD)No.1183 of 2018.

5. The learned counsel on either side reiterated their respective contentions and took us through the evidence on record.

6. Two issues arise before us :



a) Whether the decree of divorce granted at the instance of the wife on the ground of husband's cruelty is sustainable.

b) Whether the Court below was justified in granting visitation rights to Franslin Raja, the father of the minor child.

7. Stefi Grace @ Sony examined herself as P.W.1 and she testified that Franslin Raja had got habituated to liquor. She further alleged that he used to be physically and verbally abusive towards her in an intoxicated condition. The fact remains that Crime No.24 of 2012 was registered against Franslin Raja on the file of the All Women Police Station, Nagercoil. It was investigated and final report was filed and it was taken on file in C.C.No.24 of 2013 on the file of the Judicial Magistrate No.II, Nagercoil. The matter was eventually compromised and it ended in acquittal on 11.07.2014. The fact that the criminal case registered against the husband was compromised at the instance of the wife indicates that the wife wanted to save the marriage. Two years later, she had to once again leave the matrimonial home. On 20.05.2018, Franslin Raja had trespassed into the house of P.W.2 and that led to registration of Crime No.99 of 2018 on the file of Nesamony Nagar police station. The learned counsel appearing for the husband states that this case ended in acquittal.



8.A careful reading of the testimony of the wife indicates that she was put to serious mental agony and cruelty by her husband. Her father also testified on the same lines. Both the witnesses were cross-examined at length. They could not however be shaken. The wife does not stand to gain by making false allegations against the husband. Her testimony inspires our confidence. It is not the case of the husband that his wife has any other motive to come up with a false case.

9.The parties are living separately for the last eight years. We are conscious that on the ground of irretrievable break down, divorce cannot be granted. Divorce can be granted only on recognised statutory grounds. Cruelty is one such ground. When the wife states that she has been ill-treated over several years and that her husband also used to ill-treat her in an intoxicated condition, we find no reason to disbelieve the same. The Court below had rightly granted the decree of divorce. We do not find any ground to interfere with the same.

10.The Court below rightly conferred visitation rights on the father. The said order also does not warrant interference. The impugned order passed by the Court below is confirmed. Both the civil



7

C.M.A.(MD)NO.1094 OF 2018

miscellaneous appeals are dismissed. No costs. Consequently, connected

miscellaneous petitions are closed.

(G.R.SWAMINATHAN, J.) & (P.VADAMALAI, J.)
28th November 2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:
The District Judge,
Family Court,
Kanyakumari District at Nagercoil.



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8

C.M.A.(MD)NO.1094 OF 2018

G.R.SWAMINATHAN, J.

AND

P.VADAMALAI, J.

PMU

W.P.(MD)No.1094 of 2018

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