



C.M.A.(MD)Nos.678 and 679 of 2017

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 04.09.2024

CORAM:

**THE HONOURABLE MR.JUSTICE P.VELMURUGAN
AND
THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN**

C.M.A.(MD)Nos.678 and 679 of 2017

V.T.Murugan

... Appellant in
both C.M.As.

versus

M.Chitirai Selvi

...Respondent in
both C.M.As.

PRAYER in C.M.A.(MD)No.678 of 2017: Civil Miscellaneous Appeal is filed under Section 19 of Family Court Act, to set aside the order and decree made in H.M.O.P.No.419 of 2009 dated 29.05.2017 on the file of the Family Court, Madurai.

PRAYER in C.M.A.(MD)No.679 of 2017: Civil Miscellaneous Appeal is filed under Section 19 of Family Court Act, to set aside the order and decree made in H.M.O.P.No.460 of 2016 dated 29.05.2017 on the file of the Family Court, Madurai.



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For Appellant
in both C.M.As. : Mr.M.Thirunavukkarasu
For Respondent
in both C.M.As. : Mr.C.Jawahar Ravindran

COMMON JUDGMENT

(Judgment of the Court was delivered by **P.VELMURUGAN,J.**)

The appellant herein is the husband of the respondent. The respondent/wife filed a petition in H.M.O.P.No.419 of 2009 before the Family Court, Madurai, seeking restitution of conjugal rights. The appellant/husband also filed a petition in H.M.O.P.No.76 of 2013 before the Sub Court, Ramanathapuram, seeking dissolution of marriage. Thereafter, the petition in H.M.O.P.No.76 of 2013 filed by the appellant/husband was transferred to the Family Court, Madurai and renumbered as H.M.O.P.No.460 of 2016. Since both the petitions were arising out of the matrimonial disputes, both the cases were taken up together and a common order was passed by the Family Court, Madurai.

2. The case of the appellant/husband is that their marriage was solemnized on 30.08.1996. Out of the wedlock, they were blessed with three children and lived together. After sometime, the respondent/wife has not discharged her duty



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as a dutiful wife and also made a false complaint not only against him, but also against his parents and sisters. Based on the false complaint, a case was registered in Crime No.14 of 2010 and after the filing of the charge sheet, the case was taken on file in C.C.No.62 of 2010 on the file of the Judicial Magistrate, Rameswaram. After trial, the criminal case was also ended in acquittal. She left the matrimonial home even in the year 2009 and till the filing of the divorce petition, she never turned up to live along with him, which caused mental agony to him. Further, she deserted him without any valid reasons. Therefore, he has filed a petition for divorce on the ground of cruelty and desertion.

3. The case of the respondent/wife is that after the marriage, she led the matrimonial life at Madurai. Thereafter, they went to Rameshwaram in the year 2005 and they lived together. Out of the wedlock, they were blessed with three children and she was living happily in the matrimonial home. While so, the appellant had developed illegal intimacy with another woman and made her as mother to his children. Therefore, she gave a complaint as against the appellant before the All Women Police Station, Rameshwaram in the year 2008. After the trial, the criminal case was ended in acquittal on the ground of benefit of doubt.



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It is the further case of the respondent that she was ready and willing to live along with her husband, despite her husband having illegal intimacy with another woman. Further, the appellant/husband did not take care of his wife and children. Therefore, she filed an application seeking maintenance. Despite the order of the Court, he has not paid the maintenance amount. But, the appellant has filed a divorce application, by making false allegations.

4. In H.M.O.P.No.419 of 2009, on the side of the wife, she herself examined as P.W.1 and seven documents were marked. On the side of the husband, he himself examined as R.W.1 and 11 documents were marked. In H.M.O.P.No.460 of 2016, on the side of the husband, he himself examined as P.W.1 and eight documents were marked and on the side of the wife, she herself examined as R.W.1 and no documents were marked. After considering the oral and documentary evidence, the learned Judge, Family Court, Madurai, by a common order dated 29.05.2017, allowed the petition in H.M.O.P.No.419 of 2009 filed by the wife and dismissed the petition in H.M.O.P.No.460 of 2016 filed by the husband. Aggrieved over the same, the husband has filed both the Civil Miscellaneous Appeals before this Court.



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5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent herein.

6. The appellant/husband is seeking divorce only on the ground of cruelty and desertion. As far as the cruelty is concerned, though the appellant has made several allegations, the main allegation is that the respondent/wife made a false complaint as against him, which would amount to cruelty. The respondent/wife filed a complaint against the appellant before the All Women Police Station, Rameshwaram, based on which, a case in Crime No.14 of 2010 was registered and after the completion of investigation, the Investigating Officer laid the charge sheet before the Judicial Magistrate Court, Rameshwaram and the same was taken on file in C.C.No.62 of 2010. After the trial, the criminal case was ended in acquittal on the ground of benefit of doubt in favour of the appellant herein. If at all, the complaint filed by the respondent is a false one, the investigation would have been ended by mistake of fact. Even otherwise, if the investigating officer laid the charge sheet, the appellant would have filed a petition before this Court to quash the FIR or to discharge him from the charges. But, the appellant has not taken any steps either to file a petition to quash the FIR or to file a petition to



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discharge him from the charges. Merely because the appellant has not filed a petition under Section 482 Cr.P.C. seeking to quash the FIR or a petition under Section 239 Cr.P.C, seeking to discharge him from the charges, it does not mean that the appellant has committed the offence. Even after the trial, the learned Judicial Magistrate, Rameshwaram, acquitted the appellant on the ground of benefit of doubt. But, the learned Judicial Magistrate has not made any observation that the complaint lodged by the respondent is a false one and the allegations levelled by the respondent/wife were disproved during the trial. Since the appellant/husband has not proved the allegations made by the respondent, the Family Court has rightly dismissed the petition filed by the appellant/husband seeking for divorce on the ground of cruelty.

7. Though the learned counsel appearing for the appellant has placed reliance on the decision of the Hon'ble Supreme Court reported in ***Joydeep Majumdar vs. Bharthi Jaiswal Majumdar*** reported in **(2021) 3 SCC 742** and the decision of the Delhi High Court in ***Pinki Jain v. Sanjay Jain*** reported in **2005 (0) Supreme (Del) 108**, in support of his contention, there is no dispute on the proposition of law that if one of the spouses gave a complaint against the other



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spouse, the aggrieved spouse can seek remedy of divorce on the ground of mental cruelty. But, in this case, though the appellant/husband seeks divorce on the ground of cruelty that the respondent/wife lodged a false complaint against him and his family members, which amounts to mental cruelty and the criminal case registered against the husband was acquitted on the ground of benefit of doubt, there is no finding that the respondent/wife has made a false complaint as against the appellant/husband. Therefore, the decisions relied upon by the learned counsel for the appellant are not applicable to the present case on hand.

8. As far as the desertion is concerned, the respondent, during her cross examination, stated that the appellant is not taking care of her and her children and he is also having illicit intimacy with another woman. Therefore, she left the matrimonial home. Though she has given valid reasons for not living in the matrimonial home, still, she is willing to live along with her husband for the welfare of the children. Further, she has also filed the petition under Section 9 of the Act for restitution of conjugal rights. Therefore, the appellant is not entitled to get divorce on the ground of desertion. If at all, the appellant is entitled for divorce on the ground of desertion, it is for the appellant to prove that the



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respondent/wife left the matrimonial home without any valid reason. But, in this case, the appellant has failed to prove the same. Since the appellant has failed to prove that the respondent/wife left the matrimonial home without any valid reason, he is not entitled for divorce on the ground of desertion. Further, the respondent/wife is ready and willing to live with the appellant for the welfare of the children. Therefore, the Family Court has rightly dismissed the petition filed by the appellant/husband seeking divorce on the ground of desertion. This Court, being a fact finding Court, while re-appreciating the evidence, does not find any reason to interfere with the findings of the Family Court, Madurai.

9. In the result, both the Civil Miscellaneous Appeals are dismissed.

No costs.

[P.V.,J.] [K.K.R.K.,J.]
04.09.2024

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

1. The Family Court,
Madurai.



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