



C.M.A(MD)No.776 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated :10.09.2024

CORAM

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

C.M.A(MD)No.776 of 2018
and
C.M.P.(MD).No.8727 of 2018

V.Vimalraj

...Appellant

Vs.

J.Jeyasudha

...Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the order made in H.M.O.P.No.68 of 2016 dated 28.04.2017, on the file of the Family Court, Sivagangai.

For Appellant : Mr.R.Sreenivasan

For Respondent : Mr.S.M.A.Jinnah

J U D G M E N T

The husband is the appellant and he has filed this Civil Miscellaneous Appeal, challenging the decree for divorce granted by the Learned Judge, Family Court, Sivagangai in H.M.O.P.No. 68 of 2016 filed by his wife.



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For the better appreciation of the facts, parties are described hereunder as “*husband*” and “*wife*”.

2. The wife filed a petition in H.M.O.P.No.68 of 2016, seeking divorce against the appellant/husband with the following averments:

2.1. The appellant married the respondent on 23.11.2012 and during their wedlock, a girl child was born on 04.01.2014. The husband suspected the conduct of the wife from the day one of the marriage and endlessly caused intolerable harassment to her. Hence, she left the matrimonial home in the month of April 2016 and thereafter, many compromise talks ended in vain. Subsequently, the appellant is said to have assaulted his wife and hence she made a police complaint before the All Women Police Station, Sivagangai on 20.08.2016. Finally, she filed the above HMOP under section 13(1)(ia) of Hindu Marriage Act.

2.2. The appellant filed the counter denying the above allegation and the marriage between the appellant and the respondent was love cum arranged marriage and both belong to different communities and only due to the interference of the mother in law of the husband and ill- advise of the mother in law, there was a separation. He further stated that since



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both entered into love marriage, he never suspected the conduct of the wife. He never demanded any dowry. The wife herself took 4 ½ sovereigns of the gold jewels belonging to him. Immediately, after the marriage, she insisted to live separately and continuously caused problem and disturbance to him. She always intended to dominate him and never gave any respect to him as a husband. Even after the separate matrimonial home at Kerala, most of the time she never cooked and asked to by food from hotel. Even for small issues he scolded him in front of others. He tolerated everything with the fond hope that the same would be resolved after the birth of child. She also did a second abortion without his knowledge. In the complaint made before the police station, wife gave an undertaking to live with him and allowed him to see the child. But, she filed the divorce petition. There was no ground of cruelty and they had only petty quarrel and he is ready to live with her and hence he seeks for dismissal of the divorce petition.

2.3.Wife has examined herself as P.W.1 and examined P.W.2 on her side and marked Ex.P1 to Ex.P5 to substantiate her case of cruelty. The appellant examined himself as R.W.1 and examined also R.W.2 on his side. No documents were filed on his side. The learned judge family



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court after considering the entire evidence, decreed the H.M.O.P.No. 68 of 2016 and granted divorce by passing the impugned order dated 28.04.2017. Challenging the same appellant filed this appeal.

3. The Learned counsel for the appellant apart from the detailed oral submission, has filed the detailed written arguments with the dates and events. The sum and substance of the argument of the learned counsel for the appellant are as follows :

3.1. The Learned Judge, Family Court after holding that there was no evidence to prove the demand of dowry made by the appellant, ought to have dismissed the divorce petition when the allegation that the wife was subjected to harassment by suspecting her conduct had not been proved.

3.2. The Learned Judge, Family Court failed to consider that this is a case of trivial issues and only petty quarrels had happened between the spouses and there was no proof of intolerable harassment made by the appellant to grant the divorce on the ground of cruelty.

3.3. The Learned Judge, Family Court failed to consider that mere long and continued separation of the couple without any cause does not



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amount to cruelty and in the interest of the child, impugned order of granting divorce is liable to be set aside.

3.4. The Learned counsel for the husband to substantiate his argument submitted the following precedents:

- 3.4.1. 1975-2-SCC-326 Dr.N.G.Dastane Vs Mrs.S.Dastance
- 3.4.2. 2005-2-SCC-22-A.Jaya ChandraVs Aneel Kumar
- 3.4.3.2010-3-MWN (civil) -129 Rajalakshmi Vs Vairamuth
- 3.4.4. 2012-3-MWN(Civil)-397-Sukumar.A Vs K.S.Chitra
- 3.4.5. 2013-3-MWN (Civil)-55-Saravanakumar Vs M.Parameswar.
- 3.4.6. 2015-11-SCC-539 Ramachandar Vs Ananta
- 3.4.7. 2021-1-CTC-504-V.R.RajkumaranVs B.S. Lavanya
- 3.4.8.2021-1-MWN(Civil 1) Panneer Selvam Vs Sivagami.

4. The Learned counsel for the wife submitted that living with a person suspecting every act of the spouse with doubtful eyes amounts to intolerable cruelty. In the matrimonial life, basic tenet of the matrimonial life is mutual trust but in this case the appellant had been suspecting the conduct of the wife in every aspect and hence there is a matrimonial discord which had developed into broken glass pieces. The conduct of the appellant right from the marriage day are not appreciable and all her steps to safeguard the martial life with utmost tolerance ended in vain.



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The offer of the husband to reunite is not *bonafide* and also he never took any steps to resume the matrimonial life and filed this appeal only to make further harassment. Therefore, the learned trial judge correctly appreciated the circumstances of the case and granted divorce.

5. This court considered the rival submissions made by the learned counsel appearing for the appellant and the respondent and perused the materials available on record and the precedents relied upon by them.

6. Now the question to be decided in this appeal is that whether the court below is correct in granting divorce in favour of the wife?

7. Both husband and wife belong to different communities and entered into marriage on 23.11.2012 at Sivagangai. At the time of the marriage, husband was living in his native village situated at Dhasavanayackanpatti Village, Moolachathiram with his family members as a joint family. He was running auto finance at his village. After marriage, she was taken to the village and in the village, within few months, he is said to have suspected her fidelity. He is said to have



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questioned about her conduct of seeing the driver of the car. The family members also have had similar suspicion over her conduct. Therefore, some matrimonial discord had started within few months from the date of the marriage and the same had continued. Even after the birth of the female child on 04.01.2014, the suspicion has not dried up and continued as a stumbling block for the happy matrimonial life. Even he made offensive conversation by linking her with the appellant's own brother in law and hence the wife attempted to commit suicide by drinking kerosene and appellant himself driven the wife from the matrimonial home in the odd hour. Thereafter, he continued to cause disturbance to her life in her parent's house by illegally trespassing into the house and forcibly took the child which resulted into preferring complaint before the police. She deposed that she never did abortion and there was no pregnancy as pleaded by the husband. The evidence of the wife in the above aspect is cogent and trustworthy. PW2 also deposed about the incident that she was informed by PW1 about the incident that she was subjected to cruelty by making unfounded allegation against her by suspecting her fidelity by linking her with the own brother in law of the appellant and she attempted to commit suicide. The said evidence of the



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P.W.2 has to be believed. Even though it is hear say evidence, the same is duly informed by the P.W.1 to P.W.2 and the same has to be taken into consideration. Apart from that, she also deposed that there was a panchayat in her house in the month of April 2016. Apart from that the appellant himself admitted that there was a fight between the spouses in April 2016 and he deposed that he never took steps to live with her by issuing a legal notice and filing petition for restitution of conjugal right. R.W.2 also admitted that frequent quarrel had taken place between the appellant and the respondent. In the said circumstances the Learned Trial Judge correctly appreciated the circumstances of the case and rendered a finding that the appellant had suspected her conduct and thereby caused cruelty to the wife. The suspicion had not ended even after the birth of the child and it continued. Earlier, she was subjected to cruelty by having suspicion linking her with the driver. After the birth of child, the appellant and his family members had suspicion that she had relationship with his own brother in law. This type of the conduct of having suspicion over her every conduct is nothing but cruelty. The same amounts to intolerable harassment. When the appellant suspected her character by seeing her every act wearing a dark glass and magnified every incident



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with jaundiced eye, the court cannot expect her to patch up with the husband and hence this case is not the case of trivial issues. The matrimonial trust is the foundation of the matrimonial life. When there is no trust on the part of either party, there is no scope for the peaceful matrimonial life. As pleaded by the wife, her matrimonial tolerance crossed all levels and resulted in irreparable damage to the matrimonial life after making allegation of illegal conduct with his own brother in law. Therefore, the same amounts to cruelty and hence the Learned Trial Judge rightly granted divorce.

8. The “Lord Denning” has observed in his celebrated judgment in the case of *Sheldon Vs. Sheldon* reported in *1966 (1) AIER 257* “categories of cruelty are not closed” and the Hon’ble Supreme Court followed the same in the case of *Shobha Rani v. Madhukar Reddi*, reported in *1988 (1) SCC 105* and subsequent decisions and reiterated the principle that “each case rests on its own facts”. Therefore, the precedents relied by the husband is not applicable to the present case, on other hand the principle laid down by the Hon'ble Supreme Court in the above case is applicable to the present case. Causing disturbance to the



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wife by suspecting her character and making character assassination by linking her relationship with own brother in law of the appellant amounts to mental cruelty. Apart from that he caused physical assault upon the wife and also he illegally had taken the female child from the custody of the wife and the same resulted into filing of criminal complaint. In all aspects, this court finds no ground to dismiss the divorce petition filed by the wife.

9. Accordingly, this Civil Miscellaneous Appeal stands dismissed and the order passed in H.M.O.P.No.68 of 2016 dated 28.04.2017, by the learned Judge, Family Court, Sivagangai, is hereby confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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

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NCC : Yes/No

Index : Yes/No

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To

- 1.The Motor Accident Claims Tribunal,
The Chief Judicial Magistrate, Sivagangai.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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