



C.M.S.A.(MD) No.22 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2024

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.S.A.(MD) No.22 of 2017

G.Rajaperumal

... Appellant

Vs.

Muthukani

... Respondent

Prayer: Civil Miscellaneous Second Appeal filed under Section 28 of Hindu Marriage Act and Section 100 of Civil Procedure Code against the judgment and decree, dated 20.02.2017 passed in H.M.(C.M.A)No.31 of 2013, on the file of the Principal District Court, Thoothukudi confirming the judgment and decree, dated 09.12.2011 passed in H.M.O.P.No.60 of 2009, on the file of the Subordinate Court, Thoothukudi.

For Appellant : Mr.N.Subramani

For Respondent : No appearance

J U D G M E N T

The instant second appeal has been filed by the unsuccessful husband, whose petition for divorce was dismissed by both the Courts below.



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2. The appellant filed a divorce petition on the ground of cruelty and desertion stating that the respondent always had superiority complex; that even on the date of marriage, she informed the appellant that he was not a match to her; and that she used to abuse and insult him often; and that she had left the matrimonial home and thereafter, given a false complaint before the All Women Police Station and hence, he is entitled to get a decree for divorce.

3. The respondent filed a counter stating that the averments in the petition for divorce were false; and that the appellant, who had insulted the respondent, had suspected her character; and that she had left her matrimonial home only for the purpose of delivery of the child; and that a complaint was lodged by her only because the appellant had deserted her and was not taking care of her and her minor child and it was not a false complaint.

4. Both the Courts below held that the averments made in the petition against the respondent by the appellant cannot be construed as cruelty and therefore, the appellant is not entitled to get a decree for



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divorce.

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5. The learned counsel for the appellant submitted that a false complaint was lodged by the respondent before All Women Police Station and this is sufficient to constitute cruelty, even assuming that the other averments made by the appellant does not amount to cruelty.

6. At the time of admission, on 29.06.2017, this Court has framed the following substantial questions of law:

“1. Whether the Lower Appellant Court was right in refusing the decree for divorce on the ground of cruelty based on the fact that the wife had made false and frivolous allegations in the complaints lodged by her, which has been held to be a cause for mental cruelty?

2. Whether the appreciation of evidence on the part of the Lower Appellate Court is perverse?”

7. It is well settled that if false complaints are lodged before the Police by the wife, it may amount to cruelty. However, on facts, this Court finds that the complaint does not make false allegations. The respondent had approached the Police only to find a solution since according to her,



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the appellant deserted her. In such circumstances, the Courts below had rendered a factual finding that the respondent had not given a false complaint.

8. The other averments made in the petition for divorce would not be construed as cruelty to invoke Section 13(1)(ia) of the Hindu Marriage Act, 1955. The appellant had also not established that the respondent had deserted him. The substantial questions of law are answered accordingly.

9. In the result, this Civil Miscellaneous Second Appeal is dismissed. No costs.

12.09.2024

Index: Yes/ No
NCC: Yes / No
Speaking Order / Non-Speaking Order
apd

To:

1. The Principal District Court, Thoothukudi.
2. The Subordinate Judge, Thoothukudi.
3. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

apd

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