



C.M.A.No.1894 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	02.01.2025
Pronounced on	29.01.2025

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

C.M.A.No.1894 of 2018

K.Karthikeyan
S/o.Kanthasamy
Rep. by his Power Agent
T.Kanthasamy
S/o.Thangamuthu,
D.No.212/1, Chinnamuthu Main Road,
Erode Town & District.

... Petitioner/Appellant

-VS-

S.Yamini @ Yamini Somasundaram,
aged about 35 years,
W/o.Karthikeyan &
D/o.R.Somasundharam,
Old No.3, New No.4, Kottai Muthusami Road,
Erode Town & District.

... Respondent/Respondent

Prayer: Appeal is filed under Section 19(1) of the Family Courts Act, 1984 to allow this Civil Miscellaneous Appeal by setting aside the judgment and decree as made in H.M.O.P.No.269 of 2015 dated 15.03.2017 on the file of the Family Court, Erode.

For Petitioner : Mr.V.Balamurugane



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For Respondent : Mrs.Dakshayani Reddy,
Senior Counsel
For Mr.C.Karthik

J U D G M E N T
(By J.Nisha Banu,J.)

This Civil Miscellaneous Appeal has been filed, seeking to set aside the judgment and decree dated 15.03.2017 made in H.M.O.P.No.269 of 2015 by the Family Court, Erode, in and by which, the Family Court had refused to dissolve the marriage held between the appellant and the respondent herein.

Facts of the case in nutshell as put forth by the appellant:

2. The marriage between the appellant and the respondent was solemnized on 11.09.2011 as per Hindu rites and customs in Thalaiya Nallur Ponkaliyamman Temple at Sivagiri and the expenses for the marriage was equally shared by both families. Both the appellant and the respondent had initially led the family life in the native place of the appellant and thereafter, for employment purpose, the appellant moved to Bangalore along with his



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wife, where their family life ran into rough weather. There were frequent quarrels taken place between them, as a result of which, there was no consummation of marriage.

3. The respondent used to continuously harass the appellant in front of others and posed threat of committing suicide and lodging false and frivolous complaint against him and his family members, thereby, caused mental agony to him. She had also not given respect to her in-laws and brushed aside their advices, saying that their advice no longer requires to her. She was not at all interested in registering their marriage with the Registrar's office and had the habit of wandering in the city of Bangalore during night hours without informing the appellant.

4. In the year 2013, the appellant had the opportunity of employment in U.S.A. and when it was intimated to the respondent / wife, she had left the matrimonial house 15 days prior to his departure. On account of her refusal to register their marriage, the appellant was not in a position to take her to the alien country. Whenever the appellant contacted



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her from U.S.A., there was no change in her attitude and she had always been threatening him of lodging Police complaint and sending him to jail.

When the appellant was in India during vacation in 2014 and attempted to meet her, she was not inclined to meet him. She filed a Police complaint in the year 2013 against the appellant and his family members before the Superintendent of Police, Erode and from 2013, she has been living separately, besides harassing him over phone and not allowing him to work abroad peacefully.

5. Though the appellant had taken steps for reunion, it was not fructified and therefore, he had filed H.M.O.P.No.269 of 2015 before the Family Court, Erode for dissolution of marriage. However, the Family Court declined to grant divorce on the ground that there was no attempt made by the appellant for restitution of conjugal rights. The appellant had examined 3 witnesses and exhibited 6 documents. On the side of the accused, 7 documents were marked and one witness was examined.

6. The respondent / wife had filed a counter affidavit before the



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Family Court, wherein it has been stated as follows:

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i) At the first blush, the petition for divorce itself is not maintainable, as the same had been filed by a Power Agent nominated by the appellant. The appellant frequently avoided the presence of the respondent and flew to various countries without even informing the respondent. He had not led a happy marital life and he used to get angry quite often and had been taking sleeping pills. He insisted the respondent to stay away from him and had been scolding her without any rhyme or reason.

ii) In the year 2013, the appellant called the respondent over phone, when she was in her in-laws house and informed about her journey to U.S.A., which was not informed to her prior to that. Her father-in-law requested the respondent to vacate the house at Bangalore and hand over the advance amount to his friend and the mobile number of the appellant was not even given to the respondent. It was the appellant, who had refused to register their marriage and avoided mentioning about the marital status in the passport held by him.



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iii) The respondent had attempted to meet the appellant, when he was in India for five days and his parents prevented her from talking to the appellant. Thereafter, the appellant sent an email to the respondent, stating that he does not want to live with her and has decided to get separated legally. Later, he also informed her that he got a divorce from the Court and his parents did not give the address and other particulars to the respondent. It was stated in the counter affidavit that the respondent is willing to live with him and sought for dismissal of the petitioner.

7. Learned counsel for the appellant submitted that though the appellant had been taking treatment for his skin disease, it was projected by the respondent as if the appellant is impotent and is in the state of insomnia. The respondent misbehaved and quarrelled with the appellant for no reason and wanted to separate him from his parents. Despite several steps taken by the appellant, the respondent did not cooperate with him and live together, which has not been taken into account by the Family Court. He further submitted that the respondent had the habit of leaving the house without due



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intimation to anybody and if enquired, she misbehaved with the appellant and the family members, by using disrespectful and unparliamentary words.

Though the appellant suffered at the hands of the respondent from the first day of the marriage, he tolerated everything for safeguarding the reputation and interest of his family, which had been taken advantage by the respondent.

8. Learned counsel for the appellant filed a memo on behalf of the appellant, stating that the appellant had obtained divorce from the Superior Court of Fulton County, State of Georgia against the respondent on 05.12.2019 in File No.2019 CB 327275 and the application taken out by the respondent to set aside the decree of divorce was also dismissed by the said Court on 15.06.2022. The subsequent appeal filed by the respondent came to be dismissed by the Court of Appeals of the State of Georgia on 19.09.2022. Learned counsel for the appellant drew the attention of this Court to the email sent by the appellant and his Power Agent dated 02.12.2024, seeking to withdraw the present appeal on the ground stated *supra*.



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9. Per contra, learned Senior Counsel for the respondent contended that the decree of divorce obtained by the appellant from the Foreign Court cannot be recognized by this Court for the simple reason that the respondent has not submitted to the jurisdiction of the said Court or consented for passing the decree of divorce, as the decree dissolving the marriage passed by the Foreign Court is without jurisdiction in terms of the Hindu Marriage Act. In support of her contention, she has relied upon the judgment of the Supreme Court in the case of *Y.Narasimha Rao and others vs. Y.Venkata Lakshmi and another*, reported in *(1991) 3 SCC 451*, wherein it has been held as under:

“19. The provision of clause (e) of Section 13 of which requires that the courts in this country will not recognise a foreign judgment if it has been obtained by fraud, is self-evident. However, in view of the decision of this Court in *Smt. Satya v. Teja Singh*, (supra) it must be understood that the fraud need not be only in relation to the merits of the matter but may also be in relation to jurisdictional facts.

20. From the aforesaid discussion the following rule can be deduced for recognising foreign matrimonial judgment in this country. The jurisdiction assumed by the foreign court as well as the grounds on which the relief is granted must be in accordance with the matrimonial law under which the parties are married. The exceptions to this rule may be as follows: (i) where the matrimonial action is filed in the forum where the



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respondent is domiciled or habitually and permanently resides and the relief is granted on a ground available in the matrimonial law under which the parties are married; (ii) where the respondent voluntarily and effectively submits to the jurisdiction of the forum as discussed above and contests the claim which is based on a ground available under the matrimonial law under which the parties are married; (iii) where the respondent consents to the grant of the relief although the jurisdiction of the forum is not in accordance with the provisions of the matrimonial law of the parties.

21. The aforesaid rule with its stated exceptions has the merit of being just and equitable. It does no injustice to any of the parties. The parties do and ought to know their rights and obligations when they marry under a particular law. They cannot be heard to make a grievance about it later or allowed to bypass it by subterfuges as in the present case. The rule also has an advantage of rescuing the institution of marriage from the uncertain maze of the rules of the Private International Law of the different countries with regard to jurisdiction and merits based variously on domicile, nationality, residence-permanent or temporary or ad hoc forum, proper law etc. and ensuring certainty in the most vital field of national life and conformity with public policy. The rule further takes account of the needs of modern life and makes due allowance to accommodate them. Above all, it gives protection to women, the most vulnerable section of our society, whatever the strata to which they may belong. In particular it frees them from the bondage of the tyrannical and servile rule that wife's domicile follows that of her husband and that it is the husband's domiciliary law which determines the jurisdiction and judges the merits of the case.

22. Since with regard to the jurisdiction of the forum as well as the ground on which it is passed the foreign decree in the present case is not in accordance with the Act under which the parties were married, and the respondent had not submitted to the jurisdiction of the court or consented to its



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passing, it cannot be recognised by the courts in this country and is, therefore, unenforceable.

23. The High Court, as stated earlier, set aside the order of the learned Magistrate only on the ground that the photostat copy of the decree was not admissible in evidence. The High Court is not correct in its reasoning. Under Section 74(1)(iii) of the Indian Evidence Act (hereinafter referred to as the "Act") documents forming the acts or records of the acts of public judicial officers of a foreign country are public documents. Under Section 76 read with Section 77 the Act, certified copies of such documents may be produced in proof of their contents. However, under Section 86 of the Act there is presumption with regard to the genuineness and accuracy of such certified copy only if it is also certified by the representative of our Central Government in or for that country that the manner in which it has been certified is commonly in use in that country for such certification.

24. Section 63(1) and (2) read with Section 65(e) and (f) of the Act permits certified copies and copies made from the original by mechanical process to be tendered as secondary evidence. A photostat copy is prepared by a mechanical process which in itself ensures the accuracy of the original. The present photostat copies of the judicial record of the Court of St. Louis is certified for the Circuit Clerk by the Deputy Clerk who is a public officer having the custody of the document within the meaning of Section 76 of the Act and also in the manner required by the provisions of the said section. Hence the Photostat copy per se is not inadmissible in evidence. It is inadmissible because it has not further been certified by the representative of our Central Government in the United States as required by Section 86 of the Act. The expression "certified copy" of a foreign judgment in Section 14 of the Code has to be read consistent with the requirement of Section 86 of the Act.



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25. While, therefore, holding that the document is not admissible in evidence for want of the certificate under Section 86 of the Act and not because it is a photostat copy of the original as held by the High Court, we uphold the order of the High Court also on a more substantial and larger ground as stated in paragraph 14 above. Accordingly, we dismiss the appeal and direct the learned Magistrate to proceed with the matter pending before him according to law as expeditiously as possible, preferably within four months from now as the prosecution is already a decade old.”

10. Learned Senior Counsel for the respondent further contended that as rightly held by the Family Court, the appellant purposely remained separated so as to invoke the provisions of Section 13(1)(ib) of the Hindu Marriage Act in his favour. Though the respondent was very much inclined to live with the appellant, it was the appellant, who had not evinced any interest to lead the matrimonial life. It is evident from the act of the appellant that he had informed about his departure to U.S.A. to the respondent only at the last moment, leaving no room to the respondent wife to converse with him, which forced the respondent to prefer a Police complaint against the appellant in 2015. Thus, it was prayed that the order of the Family Court is perfectly valid and the present Appeal is liable to be dismissed.



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11. Heard the learned counsel on either side and perused the material documents available on record.

12. The factum of marriage between the appellant and respondent, solemnized on 11.09.2011, has not been disputed and in proof of their marriage, Ex.Ps.1 & 2 (marriage and invitation cards respectively) were marked before the Family Court. No child was born to them out of their wedlock. There was a hard nut to crack arisen in the very same year of marriage and the gap between the couple got widened day-by-day.

13. The respondent / wife was examined as D.W.1 before the Trial Court and in her deposition, she had categorically deposed that the appellant refused to have sexual intercourse with her and when she had enquired about his aversion in his behaviour, he used to get angry with her. She also deposed that the appellant had been taking pills frequently, stating that he was affected with a chronic skin disease called psoriasis and thereafter, he flew to France. From her deposition, it is clear that the appellant always avoided talking to the respondent / wife and also had the



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habit of maintaining a distance from her. It is seen that in the year, 2013, the respondent was left at her parental house and thereafter, the appellant did not care to bring her back to the matrimonial home. The family members of the appellant did not disclose the whereabouts of the appellant to the respondent /wife and on one fine morning, the appellant informed the respondent about his travel to U.S.A. on the same day, which really shocked the respondent / wife.

14. The respondent / wife, having waited for so long years and lost her hope, filed a criminal complaint against the appellant and his family members in the year 2013 before All Women Police Station, which further aggravated the situation and became a last straw. During examination of P.W.1, he had categorically stated that the respondent / wife behaved like a hysteria patient and caused mental agony by way of sending messages to the effect that she would commit suicide. On the side of the appellant, P.W.2 (maternal uncle of the appellant) was also examined, who stated that the respondent / wife used to get angry frequently and on many occasions, he pacified and tranquilized the issues between them. According to the



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appellant, there was a long separation and no prudent man can be expected to lead a life with his wife, after she dragged the husband and his family members to the Police station by filing false complaints that would amount to matrimonial cruelty entitling him to seek divorce on the said ground.

15. Even though an irretrievable breakdown of marriage is not a ground for divorce as per Hindu Marriage Act, a lengthy separation can surely be considered weighty circumstance while taking into account severance of marital ties. To that extent, there is some force in the argument of the learned counsel for the appellant, as the filing of complaints against the husband and his family members and thereafter, attempting for reunion is nothing, but a legal terrorism as held by the Supreme Court in the case of **Sushil Kumar Sharma vs. Union of India and others (Writ Petition (civil) 141 of 2005)**, decided on 19.07.2015, observing as follows:

“.....The object of the provision is prevention of the dowry meance. But as has been rightly contended by the petitioner many instances have come to light where the complaints are not bonafide and have filed with oblique motive. In such cases acquittal of the accused does not in all cases wipe out the ignomy suffered during and prior to trial. Sometimes adverse media coverage adds to the misery. The question, therefore, is what remedial measures can be taken to prevent abuse of the well-intentioned provision. Merely because the provision is constitutional and intra vires, does not give a



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licence to unscrupulous persons to wreck personal vendetta or unleash harassment. It may, therefore, become necessary for the legislature to find out ways how the makers of frivolous complaints or allegations can be appropriately dealt with. Till then the Courts have to take care of the situation within the existing frame work. As noted the object is to strike at the roots of dowry menace. But by misuse of the provision a new legal terrorism can be unleashed. The provision is intended to be used a shield and not assassins' weapon. If cry of "wolf" is made too often as a prank assistance and protection may not be available when the actual "wolf" appears. There is no question of investigating agency and Courts casually dealing with the allegations. They cannot follow any strait jacket formula in the matters relating to dowry tortures, deaths and cruelty. It cannot be lost sight of that ultimate objective of every legal system is to arrive at truth, punish the guilty and protect the innocent. There is no scope for any pre- conceived notion or view. It is strenuously argued by the petitioner that the investigating agencies and the courts start with the presumption that the accused persons are guilty and that the complainant is speaking the truth. This is too wide available and generalized statement. Certain statutory presumption are drawn which again are reputable. It is to be noted that the role of the investigating agencies and the courts is that of watch dog and not of a bloodhound. It should be their effort to see that in innocent person is not made to suffer on account of unfounded, baseless and malicious allegations. It is equally indisputable that in many cases no direct evidence is available and the courts have to act on circumstantial evidence. While dealing with such cases, the law laid down relating to circumstantial evidence has to be kept in view.”

16. Admittedly, both the appellant and the respondent are living separately for more than a decade and both of them accused each other of having mental illness. Since there was no medical evidence



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produced on the side of the parties, the ground raised to that effect will not attract the provisions of Section 13(1)(iii) of The Hindu Marriage Act, 1955 to consider their submissions on that score. It is evident from their own depositions that there was no restitution of conjugal rights from the year 2013. As per Section 13(1A) of The Hindu Marriage Act, 1955, prolonged separation can be one of the grounds to file a petition for divorce. The said provision reads as follows:

“13(1A) Either party to a marriage, whether solemnised before or after the commencement of this Act, may also present a petition for the dissolution of the marriage by a decree of divorce on the ground

(i) that there has been no resumption of cohabitation as between the parties to the marriage for a period of one year or upwards after the passing of a decree for judicial separation in a proceeding to which they were parties; or

(ii) that there has been no restitution of conjugal rights as between the parties to the marriage for a period of one year or upwards after the passing of a decree for restitution of conjugal rights in a proceeding to which they were parties.”

17. The Supreme Court, in a number of cases, namely, R.Srinivas Kumar vs. R.Shametha [2019 (9) SCC 409] and Munish Kakkar vs. Nidhi Kakkar [AIR 2020 SC 111] categorically held that an irretrievable marriage is a marriage where husband and wife have been living separately



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for a considerable period and there is absolutely no chance of their living together again and dissolved the marriage by invoking its power under Article 142 of the Constitution of India. Even in a recent judgment in the case of **Rakesh Raman vs. Kavita**, reported in **AIR 2023 SC 2144**, the Apex Court, held that as under:

“18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1)(ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock.”

18. From the facts and evidence pleaded by the parties, an inference can be drawn that there is no cohabitation between them and there is a complete break down of all meaningful bonds that can be termed to be cruelty in the light of Section 13(1A) of the Act, 1955. Pursuant to the long



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gap between the parties, there is a remote chance of their reunion and if the parties live together, it would be injurious and harmful for both of them.

Moreover, an affidavit has been filed by the appellant that he had already obtained divorce from the Superior Court of Fulton County, State of Georgia against the respondent on 05.12.2019 in File No.2019 CB 327275. A sacred marriage involves human sentiments and emotions and if they are dried-up, there is hardly any chance of their springing back to life on account of artificial reunion created by the Court's decree. Therefore, we are of the view that compelling the appellant to live with the respondent will not yield any fruitful results, rather it will create adverse effect on their matrimonial life.

19. Thus, this Court comes to a conclusion that the appellant has proved cruelty against him by the respondent / wife and the wife had neither filed a petition for restitution of conjugal rights nor taken any steps to reunite with the appellant. Considering the fact that there is a long separation and the chances of their reunion are remote and bleak, in our considered opinion, the instant Civil Miscellaneous Appeal is to be allowed. At the same time, this Court cannot leave the respondent / wife at lurch and she should be compensated by way of grant of permanent alimony. Although



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the respondent / wife has not specifically claimed any monetary relief, it is just and equitable to grant such relief, taking into consideration the financial status of the parties and their professional backgrounds in the interest of justice. In the given case, taking note of the fact that the appellant / husband is working in U.S.A. and has been earning a decent income, a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) may be fixed as a permanent alimony payable by the appellant to the respondent/wife.

J.NISHA BANU,J.

and

R.SAKTHIVEL,J.

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20. In the result, this Civil Miscellaneous Appeal is allowed and the judgment and decree dated 15.03.2017 made in H.M.O.P.No.269 of 2015 by the Family Court, Erode is set aside. The marriage between the appellant and the respondent solemnized on 11.09.2011 at Thalaiya Nallur Ponkaliyamman Temple at Sivagiri, is hereby dissolved by granting a decree of divorce. The appellant/husband is directed to pay a sum of Rs.30,00,000/- (Rupees Thirty Lakhs only) towards permanent alimony to the respondent/wife within a period of three months from the date of copy of receipt of this judgment. No costs.



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(J.N.B.J.,) (R.S.V,J.,)
29.01.2025

Speaking order/Non-speaking order

Index: Yes / No

Internet: Yes / No

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To:

The Family Court Judge,
Erode.

PRE-DELIVERY JUDGMENT IN
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