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C.M.A.No.977 of 2020

AT THE JUDICATURE OF MADRAS HIGH COURT

Reserved On:21.10.2024

Delivered On: 21.02.2025

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

and

THE HONOURABLE MRS.JUSTICE R. KALAIMATHI

C.M.A.No.977 of 2020

and

C.M.P.No.6139 of 2020

Dhilip Kumar

... Appellant/Petitioner

-Vs-

Saraswathy @ Geetha

... Respondent/Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1955, to set aside the judgment passed in O.P.No.148 of 2018 dated 07.09.2018 on the file of the Principal Judge, Family Court, Chennai.

For Appellant : Mr.S.Sridevi



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For Respondent : Mr.R.Sreedhar

J U D G M E N T

(Judgment of the Court is authored by Mrs.R.KALAIMATHI,J.)

This Civil Miscellaneous Appeal is preferred against the judgment dated 07.09.2018 passed in HMOP No.148 of 2018 on the file of the Principal Family Court, Chennai by the husband(petitioner).

2.The case set out in the petition is stated in brief:

The marriage between the petitioner and the respondent was solemnized on 31.08.2014 at Royal Mahal, Karaikal, as per Hindu rights and customs. The respondent/wife would not allow the petitioner to talk through phone while he was at home to watch TV. The activities of the respondent appeared strange for him. The respondent would become angry and she would throw the articles on the petitioner and behaved



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arrogantly. She used to shout and abuse the petitioner in filthy words. She would quarrel with others also. In view of the above said activities, the petitioner advised her to take the advice of the doctor, but the respondent did not heed to his request. The respondent used to go to Karaikal without any intimation to him during the night hours and used to talk frequently to some other persons. On 19.05.2016, the respondent told him over phone that some persons attempted to commit murder upon her brother Sivakumar and he lost his two fingers and she was taking her brother who was on admission at JIPMER Hospital, Pondicherry. Brother of the respondent was treated as inpatient for 1 ½ months and thereafter he was discharged from the hospital. On 26.06.2016, the Inspector of Police contacted the respondent through her mobile phone and asked her to come to Niravi Police Station for enquiry. Based on her confession, she was arrested by the police for attempting to commit murder her own brother by engaging henchmen. She was arrayed as first accused and the



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case was registered against her under Section 307 IPC. Therefore, leading the life with the respondent as her husband is not possible. It causes so much mental agony to him besides loss of reputation of his family members in the society.

3.The details of the counter are given hereunder:

The allegations made in the petition were denied. She was affectionate towards her husband and she is adjusting with her husband. The criminal case was foisted against her by her brother Sivakumar in order to grab her share over the immovable property and to separate the respondent from her husband. The behaviour of the petitioner has become worst and he has started avoiding her.

4.At trial, on the side of the petitioner/husband, he has examined himself as P.W.1 and four documents were marked. On the side of the



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respondent, the respondent has examined herself as R.W.1 and two documents were marked.

5.Upon consideration, the Principal Family Court, Chennai, has held that the allegations levelled by the petitioner on the respondent appears to be ordinary wear and tear in a family and as regards the criminal case, it cannot be taken as a ground for seeking dissolution of marriage and the petition was dismissed. Against which, the husband(petitioner) has preferred this appeal.

6.In order to substantiate the details of the petition, the petitioner has examined himself as P.W.1 and he has filed the prove affidavit in line with the contents of the petition. The following acts of cruelty have been put-forth by the petitioner on the respondent/wife:

(i)The respondent if she becomes angry she would behave



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arrogantly, she would shout and abuse the petitioner in filthy language.

(ii) In such a situation, she would throw the articles on him.

(iii) She used to quarrel with others.

(iv) She was arrested by the Niravi Police Station, Karaikal under Section 307 IPC case (attempt to commit murder)

Therefore, he expressed his fear to live with her in future.

7. Whereas the respondent/wife has denied the allegations raised in the petition and as regards the criminal case, it is her allegations that it was foisted against her by her brother Sivakumar to grab her share over the immovable property and in order to separate her from her husband.

8. In a matrimonial case, burden of proof lies on the petitioner. As regards the decree of probability, it is not one beyond reasonable doubt,



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but of preponderance of probabilities.

9.The petitioner/husband has filed the O.P for an order of divorce on the ground of cruelty and desertion.

10. As regards the word 'Cruelty', the Court has got a wider spectrum for consideration so as to apply it contextually. It depends upon the educational, social and financial background of spouse, culture, conduct of husband and wife, physical and mental weakness of the spouse, etc. The reasons are enumerative and exhaustive. It differs in each household and for each person. Even deliberate and willful intention may not matter at times.

11. With the passage of time, due to the impact of, especially electronic media, the concept of cruelty is getting changed from time to time. There cannot be any fixed parameters for determining the issue of cruelty in matrimonial matters. Therefore, it is prudent to adjudicate on a



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case to case basis, by evaluating in a given situation. Acts of cruelty would differ from person to person and man to a woman and a broad approach is the need of the hour in matrimonial matters. In the modern era, issues have to be dealt with some latitudinarianism.

12. Useful reference may be made as to the observations of the Apex Court in the matters of granting of divorce on the ground of cruelty in *Dr.N.G.Dastane Vs. Mrs.S.Dastane* reported in 1975 (2) SCC 326, the Hon'ble Supreme court has held that:

“27. The misconception regarding the standard of proof in matrimonial cases arises perhaps from a loose description of the respondent's conduct in such cases as constituting a “matrimonial offence”. Acts of a spouse which are calculated to impair the integrity of a marital union have a social significance. To marry or not to marry and if so whom, may well be a private affair but the freedom to break a matrimonial tie is not. The society has a stake in the institution of marriage and therefore the erring spouse is treated not as a mere defaulter but as an offender. But this social philosophy, though it may have a bearing on the need to have the clearest proof



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of an allegation before it is accepted as a ground for the dissolution of a marriage, has no bearing on the standard of proof in matrimonial cases.”

13. It is relevant to refer the observations made by the Hon'ble Supreme Court in *V.Bhagat Vs. D. Bhagat* reported in (1994) 1 SCC 337:

“16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one



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case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

14. In *Samar Ghosh vs Jaya Ghosh* reported in (2007) 4 SCC 511, the Hon'ble Supreme Court has held that:

“101. (x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.”

15. In the case of *Roopa Soni Vs. Kamalnarayan Soni* reported in 2023 SCC Online SC 1127 has observed that “...the court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — *libre recherché scientifique* i.e. “free scientific research”...”.



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16.It has come on record through the cross-examination of P.W.1 that after in the marriage on 31.08.2014, they lived together in Chennai for two years. When a question was posed to P.W.1 during cross-examination, based on what reasons he filed the petition for divorce, he has answered that his wife is a short tempered person and she would always lie and he has no scope to live with her. When he was posed a question as to the other reasons for filing of divorce petition, he has stated that most of the times, she would talk to some other persons through cell phone. When he asked her about that, his wife would shout at him. It appears that about her said activity, he told his mother-in-law and she told him that she would advise her daughter. Thereafter, there was no change in her attitude rather she wanted to take revenge on him. When a suggestion was posed that his wife is ready to live with him, he answered that he is not ready to accept her. When a suggestion was posed to him



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that after the criminal case was registered against his wife, he feels unsecured even before registering of criminal case. When another suggestion was posed him to the effect that if his wife is acquitted in the criminal case, he would accept her, for which, his answer was in negative. He has reiterated that as safety measure he wants to be away with his wife.

17. Rather RW.1-Saraswathy @ Geetha, has denied the allegations raised by the petitioner/husband and she would state that the petitioner stopped talking or discussing to her by hearing the words of his relative. She would further state that the behaviour of the petitioner has become worst day by day and he has started avoiding her but she wants to live together with her husband.

18. From the evidence of R.W.1, it is deducible that because of her ill temperament he stopped talking or discussing to her. The evidence of



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R.W.1 to the effect that after a lapse of 1 ½ years from the date of marriage, there was some change in the behaviour and the attitude of the petitioner and he stopped talking or discussing to her would probablise the case of the petitioner that it would not possible for him to casually move with her.

19.As regards the criminal case registered against the respondent/ wife in order to know about the details, I carefully perused Ex.P.3-FIR and Ex.P.4-Final Report. In fact, the brother of the respondent viz., Sivakumar, lodged a complaint after the assault made on him by unknown two persons and his finger was cut off. After the incident, in fact he has lodged complaint against his wife and father-in-law. But during the investigation by the Niravi Police Station(Karaikal District), the respondent/wife was arrested in connection with the complaint of her blood brother Sivakumar. Charge sheet was also filed under Section 307 IPC r/w 34 IPC and the



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respondent is arrayed as the first accused. Charge sheet was filed against the respondent and yet another 5 persons stating that she engaged henchmen to kill her brother. Final report was filed on 14.12.2017 before the concerned Magistrate Court on the next year, this O.P has been filed for an order of divorce on the ground of cruelty by the husband.

20.The petitioner/husband's main contentions are that his wife is a short tempered person and she would behaviour arrogantly. It is further contention that she would shout and abuse him in filthy language, which means whenever a situation comes or difference of opinion comes, his understanding about his wife he has mentioned supra. Of course, these are all ordinary wear and tear in normal life.

21.The commissions and omissions complained of by the petitioner may not be acts of cruelty in the eyes of the respondent. But based on the



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evidence of R.W.1 as mentioned supra that the petitioner within 1 ½ years from the marriage he has stopped talking to her would indicate the fact that he had strong ill-feeling on her. Charge under Section 307 IPC on the respondent, of course is a strong factor for him to avoid her. Not only he has expressed his fear to live with her, but he has reiterated the same subsequently also that he is not at all interested to live with her, after the case was registered against her. As regards her attitude and temperament, by condoning her acts, he was living with her before the case was registered against his wife under Section 307 IPC. But, he does not want to condone the same. Thereafter, the husband has made out a strong case for divorce on the grounds of cruelty.

22.Taking into account of both sides evidence coupled with Ex.P3(FIR) and Ex.P4(Charge Sheet). It is pertinent to note that the respondent/wife told her husband that her brother was assaulted by some



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persons and she wanted to go to Karaikal. But, thereafter, Niravi Police arrested his wife for offence under Section 307 IPC in connection with her blood brother's complaint against his wife. We have no hesitation to conclude that the matrimonial bond between the petitioner and the respondent has been ruptured to the maximum extent and especially after the registration of the criminal case against his wife, the petitioner does not have any emotional attachment towards his wife, as he has expressed his fear to live with her in future. He has also strongly impressed by the consideration that the marriage has become unworkable. In the interest of both sides and in order to do complete justice to the parties, as the marriage has become fiction on the part of the petitioner, it is better to permit them to live apart. Of course, we are conscious of the fact that Hindu Marriage as per Vedic Philosophy, it is a sacrament.

23.In such a view of the matter and to shorten the agony of the



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petitioner in the given circumstances, we deem it fit that the dissolution of marriage is the inevitable conclusion and the appellant/husband is entitled for decree of divorce. We order that this Civil Miscellaneous Appeal stands allowed by setting aside the order of the dismissal dated 07.09.2018 passed by the trial Court in OP No.148 of 2018. The marriage held between the appellant and the respondent on 31.08.2014 at Royal Mahal, Karaikal, stands dissolved on the ground of cruelty. The husband has obligation to provide for his wife's maintenance and support does not come to an end on the passing of an decree for divorce in favour of the husband. In consideration of the details found in the pleadings as well as the evidence of both sides as per Section 25 of Hindu Marriage Act, we deem it fit to order a sum of Rs.10 lakhs as permanent alimony to be paid by the appellant/husband in favour of the respondent within a period of four months from the date of receipt of a copy of this judgment. There is no order as to costs. Consequently, connected miscellaneous petition is



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(J.N.B.J.,) (R.K.M.J.,)

21.02.2025

NCC:Yes/No

Index:Yes/No

Internet::Yes/No

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To

1.The Principal Judge,
Family Court,
Chennai.



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J.NISHA BANU,J.
and
R. KALAIMATHI,J.

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