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CMA NO.1539 OF 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 06 / 11 / 2024

JUDGMENT DELIVERED ON: 28 / 01 / 2025

CORAM:

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

CMA NO.1539 OF 2017

S.Sam Sundar

... Appellant / Petitioner

Vs.

S.Anitha

... Respondent / Respondent

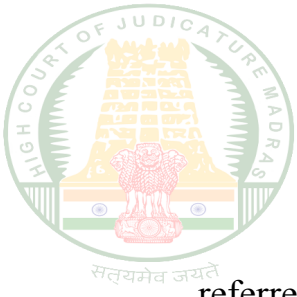
PRAYER : Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1984, praying to set aside the Judgment and Decree dated April 8, 2015 passed in I.D.O.P.No.36 of 2008 on the file of the Principal District Court, Vellore.

For Appellant : Mr.J.Rajmohan
For Respondent : Notice served – No appearance

J U D G M E N T

R.SAKTHIVEL, J.

Challenging the Judgment and Decree dated April 8, 2015 passed by the Principal District Judge, Vellore, in I.D.O.P.No.36 of 2008, the petitioner has preferred this Civil Revision Petition.



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2. For the sake of convenience, henceforth, the parties will be

referred to as per their array in the I.D.O.P.

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Petitioner's Case

3. The marriage between the petitioner and respondent was solemnized on September 5, 2007 at Ammoor Village, Walajah Taluk, as per Christian Rites and Customs. Their marriage was registered as per the Indian Christian Marriage Act, 1872. According to the petitioner, at the time of marriage, the respondent concealed her age, which is seven years more than that of the petitioner. Further, the petitioner belongs to Adi-Dravidar Community and the respondent belongs to Kammavar Naidu. Therefore, the respondent is not willing to live along with the parents of the petitioner and very often, the respondent scolded the petitioner's parents in filthy language. Apart from that, she led a wayward life and without any information or intimation to the petitioner, the respondent left the matrimonial home and settled with her parents. Subsequently, she lodged a complaint before the All Women Police Station against the petitioner. Thus, the respondent treated the petitioner with cruelty, causing a reasonable apprehension in the petitioner's mind that living with her would be harmful and injurious to him. Hence, the petition for divorce.



Respondent's Case

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4.The respondent admitted the marriage between the respondent and the petitioner. The respondent submits that the petitioner and his parents belonged to Adi Dravidar Community and are Christians by religions and the respondent belonged to Kammavar Naidu community by caste and Hindu by religion. Before their marriage, the respondent converted to Christianity, and the marriage was performed according to Christian rites. The respondent denied the allegation that she was older than the petitioner and that marriage was based on mutual love, however under the influence of petitioner's parents, petitioner avoid marriage and therefore, she was obliged to file a complaint to police and subsequently the petitioner agreed to marry the respondent and on that assurance the complaint was withdrawn by the respondent. The allegations contra made in para 6 of the petition are all false and denied.

4.1.The respondent denied the allegations that the parents of the petitioner presented gold jewellery to the respondent at the time of marriage apart from meeting the marriage expenses. As a matter of fact, the marriage expenses alone were met by the petitioner and his parents and subsequently the petitioner's parents received a sum of Rs.1 Lakh from the respondent's parents towards the marriage expenses incurred by them.



Besides, the respondent's parents had presented 40 sovereigns of Gold jewels after two weeks from the date of marriage since they made up their mind to help their daughter to lead a peaceful life though they had not attended the marriage of the respondent with the petitioner. The respondent never thought of the religion or caste of the petitioner and his parents since she wholeheartedly loved the petitioner and wanted to live with him peacefully.

4.2.The respondent was subjected to cruelty by the petitioner and his parents. The petitioner started demanding money from the respondent by saying he was going to construct a building near VIT University, Vellore and when she expressed her inability to comply with his demand, the petitioner coerced her to get her share in the immovable property from her father following which they could sell the property and utilize the funds for construction of a building near VIT University.

4.3.The respondent came to understand that the petitioner never had inclination to live with her amicably but had an eye on the property of the respondent. The respondent submits that she married the petitioner knowing fully about the caste and religion to which the petitioner belonged and she never ill-treated the petitioner on the pretext of the caste or religion to which the petitioner belonged to.



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4.4. The respondent stated that she never burked her age during the registration of the marriage and as a matter of fact, the petitioner alone filled up the details for registration of the marriage and he only made some corrections in the marriage certificate.

4.5. Since the respondent was subjected to cruelty by the petitioner and his parents, she was constrained to lodge a complaint to All Women Police, Ranipet. The petitioner alone acted in a manner with a dishonest intention to break the marital tie. The petitioner has invented false allegations to create a ground for filing the petition for divorce.

4.6. The respondent stated that she never left the matrimonial home without sufficient cause, but, on the other hand, she was forced to live away from the petitioner only due to the cruel treatment meted out to her by the petitioner and his parents. She never took the gold jewels presented to her by her parents when she was forced to leave her matrimonial home. There is no cause of action for the above petition and the one pleaded by the petitioner are all false and invented. Therefore, the respondent sought to dismiss the petition with cost.

5. The Trial Court framed the following points for consideration:



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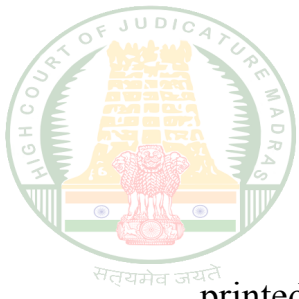
“1. Whether the petitioner is entitled for divorce by dissolving the marriage solemnized between the petitioner and respondent dated 05.09.2007 on the ground of cruelty? And

2. Whether this petition is to be allowed?”

6. In order to prove his case, the petitioner was examined as P.W.1 and Ex-P.1 to Ex-P.4 were marked. On the side of the respondent, respondent was examined as R.W.1 and no documents were marked.

7. The Trial Court, after analyzing the oral and documentary evidence available on record held that since the marriage between the petitioner and the respondent was a love marriage, the allegation that the respondent suppressed her age was not believable. Furthermore, the respondent left her family, converted to Christianity, and married the petitioner. Under these circumstances the allegations levelled against the respondent by the petitioner are not proved and finally concluded that the respondent has not committed any act of cruelty against the petitioner. Accordingly, dismissed the original petition filed for divorce.

8. Feeling aggrieved, the petitioner / husband has filed the present Civil Miscellaneous Appeal.



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9.Despite service of notice to the respondent and her name

printed in the cause list, there is no representation on her behalf.

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10.Mr.J.Rajmohan, learned Counsel appearing for the appellant / petitioner would submits that the respondent is older than the petitioner. Further, he would submit that the marriage between the petitioner and the respondent took place in 2007 and for the past 17 years, the petitioner and the respondent have been living separately. He would also submit that the respondent falsely filed a complaint against the petitioner and his family members. The said complaint culminated into a charge sheet and the charge sheet was taken on file in CC.No.73 of 2011 on the file of the District Munsif, Ranipet, Vellore District. After full-fledged trial, the petitioner and his parents and the petitioner's sister were acquitted for the offence under Section 498(A), 342, 294(b), 324, 406, 506 (2) of The Indian Penal Code, 1860 and Section 4 Women Harassment and Section 4 of Dowry Harassment Act, 1961. Further, he would submit that for the past 14 years, the respondent has not taken any steps to live with the petitioner and hence the marriage between the petitioner and the respondent has broken down irretrievably. There is no chance of a reunion. Accordingly, he prayed to allow the Civil Miscellaneous Appeal.



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11.This Court has considered the submissions made by the learned counsel for the appellant and perused the materials available on record.

12.Admittedly, the petitioner and the respondent loved each other and the marriage between them is a love marriage. The petitioner belongs to Christian and the respondent belongs to Hindu. The respondent converted to Christianity and married the petitioner on September 5, 2007 and the marriage was registered before the Prince of Peace Church. Their Marriage Certificate is marked as Ex.P2. In the marriage certificate, the age of the petitioner and the respondent have been clearly shown with their date of birth and age. According to the respondent, the petitioner alone filled up the form for the registration of the marriage. Admittedly the marriage has been registered before the Church. The respondent converted to Christianity just before the marriage. In these circumstances, the allegations levelled by the petitioner against the respondent that the respondent suppressed her date of birth and age cannot be accepted. Hence, this Court rejects the said arguments

13.On perusal of the evidence, on April 9, 2008 when the respondent's mother visited the petitioner house to see the respondent,



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some verbal altercations occurred which lead to some misunderstanding between the petitioner and the respondent. Consequently, the respondent filed a complaint against the petitioner and went out of the matrimonial home and resided in her parents house. Further, the respondent filed a complaint against the petitioner and his parents and his sister and the said complaint culminated into a final report and the same was taken on file in C.C.No.73 of 2011 on the file of the District Munsif, Ranipet. It appears that the said case against the petitioner and his family members ended in acquittal which shows that complaint is not fully true. This Court is of the view that filing complaint against the petitioner does not amount to cruelty but the filing of the complaint against the petitioner and the family members without sufficient proof amounts to cruelty.

14.The allegations made by the respondent against the petitioner that the petitioner demanded dowry from respondent's parents are not proved. Further, the allegations that the respondent uttered vulgar words towards the petitioner and his family members are also not proved. Hence, considering the facts and circumstances, this Court is of the view that the marriage between the petitioner and the respondent has broken down irretrievably. Petitioner has made out a case under Section 10(1)(x)



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of the Divorce Act, 1869. Further, considering the facts and circumstances, this Court is of the view that the respondent is entitled to get maintenance from the petitioner.

15. With the above observations, this Civil Miscellaneous Appeal is allowed. The marriage between the petitioner and the respondent is dissolved by a decree of divorce. It is made clear that although this appeal is allowed and divorce is granted in favour of the petitioner, the respondent is entitled to claim maintenance from the petitioner. This judgment, granting the dissolution of marriage, will not in any way affect the respondent's right to claim maintenance. Considering the facts and circumstances of the case, there shall be no order as to costs.

[J.N.B., J.]

[R.S.V., J.]

28 / 01 / 2025

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
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To
The Principal District Judge
Principal District Court
Vellore.



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J. NISHA BANU, J.
AND
R.SAKTHIVEL, J.

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PRE-DELIVERY JUDGMENT MADE IN
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28 / 01 / 2025