

C.M.A.(MD)No.44 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
12.02.2024	23.02.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

C.M.A.(MD)No.44 of 2024

~~S.K.Krishnamoorthy~~

... Appellant

vs.

~~Jeyapriya~~

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, against the fair and decretal order dated 19.10.2022, made in H.M.O.P.No.2 of 2022, on the file of the Family Court, Srivilliputhur.

For Appellant

: Dr.G.Krishnamoorthy
for Mr.J.B.Solomon Peter Kamal Doss

For Respondent

: Mr.M.Prabu



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JUDGMENT

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

The husband on dismissal of his divorce petition by the Family Court, Srivilliputhur, has knocked the doors of this Court by preferring the Civil Miscellaneous Appeal.

2. The respondent, who is the wife, had contested the divorce petition. Very serious allegations of cruelty alleged against her by the appellant to get divorce under Section 13(1)(i-a) of the Hindu Marriage Act, not found proved, resulted in dismissal of divorce petition.

3. The short facts of the case as narrated by the parties in their respective pleadings indicates that they got married on 03.11.2017 at Pethavanallur Arulmigu Mayuranathaswamy Temple, Rajapalayam. As per customs, gold jewels were given as Stridhana to the respondent and the appellant was also given a gold bracelet, chain, and ring. They started their matrimonial life at Chennai. Since the respondent was having her own business, they used to travel to Rajapalayam

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and Kovilpatti during weekends. Thereafter, on 24.01.2018 the appellant took a job at abroad, accepting a works contract. The respondent thereafter left to her parents' house. The discord between the spouses got widened and intermittently, they used to join.

4. Making various allegations both trivial and serious in nature, petition been filed by the appellant stating that he had been regularly harassed by the respondent over e-mails and phone between 02.01.2020 and 18.10.2020 besides lodging of a criminal complaint falsely alleging dowry demand and harassment. As a consequence, the appellant and his family members were taken to the Police Station in the presence of his relatives, who were present to attend his sister's marriage. In the Police Station, he agreed to have a separate home and take back the respondent. However, the complaint metamorphosed into a prosecution for offences under Sections 498-A, 406 and 506(ii) I.P.C. and Section 4 of the Dowry Prohibition Act, in Crime No.16 of 2020 against him and his family members and therefore, claiming that due to mental cruelty caused by the respondent, the marriage has freezed and irretrievably broken. Hence, the marriage has to be dissolved.

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5. The counter affidavit filed by the respondent contains allegations against the appellant stating that her father was forced to meet out the marriage expenses and give dowry as demanded. She denied the allegation that she has taken back the jewels soon after the house warming ceremony held on 09.12.2019. The appellant, who was employed in a Ship used to be offshore continuously for more than 6 to 9 months and during that period, she was harassed by the parents and sister of the appellant, who used to demand more jewels and cash as dowry. The cruelty she met at the hands of her in-laws was expressed by her through e-mail to the appellant, but the appellant has failed to heed her difficulty, which has made her to fall sick and only thereafter, the appellant came back to India, advised his parents and sister. For construction of the house at Perungalathur, her father gave Rs.5,00,000/-. However, his mother and sister continued to harass her demanding dowry.

6. The respondent, in her counter affidavit, has denied the allegation that she did not cooperate for physical intimacy and made a counter allegation that the appellant suffered from deficiency of sperm count and therefore, he was advised

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to take treatment. Only thereafter, she got conceived. But, when she was pregnant, she was pushed from the steps by the sister and mother of the appellant. This resulted in miscarriage and she was admitted in hospital on 09.12.2019. After treatment, when she returned to the matrimonial home on 13.12.2019, she was not allowed to enter the matrimonial home, which forced her to leave the matrimonial home.

7. The appellant, to substantiate his petition, examined himself as P.W.1 and one Christy as P.W.2 and marked 7 documents. The respondent examined her relative one Jothimani as R.W.1 and marked 10 documents. The F.I.R. in Crime No.16 of 2020 is marked as Ex.X1.

8. The trial Court, on considering the evidence, had found force in the averment made in the counter affidavit filed by the respondent. The trial Court held that, the respondent was in fact subjected to cruelty and ill-treatment, which has led to filing of complaint with Police, which is the subject matter of Crime No.16 of 2020 [Ex.X1]. The medical report of the appellant indicate 'very poor sperm DNA', which was also the cause for matrimonial discord and lack of physical intimacy. But, attributing the reason of less sperm count for the lack of



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physical intimacy, thereby, justifying the conduct of the respondent, the trial Court declined to dissolve the marriage on the ground of cruelty by the respondent/wife.

9. The learned counsel appearing for the appellant while reading the e-mail exchange between the parties, which in fact, bordering vulgarity and obscenity and full of abuse, submitted that for more than five years, the parties are living separately. The criminal complaint, making false accusation against the appellant as well as his parents itself is a cruelty as held by the Hon'ble Supreme Court. However, the trial Court has failed to take note of these facts and has pedantically dismissed the divorce petition without proper appreciation of the material evidence.

10. Per contra, the learned counsel appearing for the respondent submitted that the appellant and his family members were the cause for separation. After causing cruelty to the respondent and forcing her to leave the matrimonial home, the appellant cannot take advantage of his own fault and seek dissolution of the marriage. The respondent is still willing and ready to join and live with the

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appellant. However, the appellant has no intention to save the marriage and there is enough information that the appellant has married another lady and living with her.

11. This Court has given its anxious consideration to the rival submissions made by the learned counsel on either side.

12. The appellant, who is presently employed in abroad, appeared through Video Conferencing. The respondent was also present in person in the Court. The arguments of the learned counsels were watched by the parties.

13. The learned counsel for the appellant took us to Exs.B1, B2, B6 and B7, the e-mail communications between the parties. The exchange of accusation between the appellant and the respondent since 2019 would clearly show that nothing was well and both of them were beating around the bush, making accusation against each other and their family members.



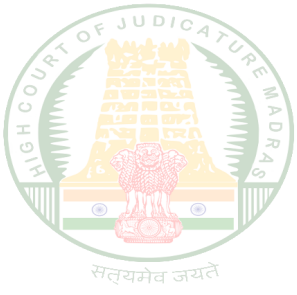
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14. The bloated ego has screened their sense. The abusive words used against each other does not indicate any scope to re-unite or intention to mend their behaviour to save their marital bond. This Court restrained the counsel for the appellant from reading the contents of the e-mail in the open Court, since it was not worthy reading in public. The parties are well educated. They could have saved the matrimonial relationship, if they had intention to save. They do not have any pregnancy and they are living separately for more than five years. A criminal complaint has already been filed against the appellant, his mother and sister and still pending. The remote possibility of re-union after the dismissal of the divorce petition has also got weakened, since the respondent suspects that the appellant has developed relationship with another lady and living with her.

15. The peculiar facts and evidence in this case reveal that both the appellant as well as the respondent are equally responsible for the separation and causing mental cruelty and also subjected to mental cruelty by the other party. The trial Court had observed that it was the cruelty faced by the respondent had forced her to give a criminal complaint and the same remains pending trial. The question is whether the exchange of cruelty between the parties, which has led to

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separation for more than five years and reached the stage of no return, can be kept under suspended animation forever. This Court cannot afford to ignore the fact that the parties are living separately for more than five years and the criminal complaint initiated by the respondent is pending against the appellant, his mother and sister. Now, the parties have crossed 35 years of age and unless and until they are certain about their marital status at the earliest, it will be difficult to decide their future. Any delay may cause further escalation of discord and acrimony.

16. On reading the exchange of abusive words by the parties, this Court holds that the appellant as well as the respondent equally caused cruelty and it cannot be attributed to the respondent or the appellant alone. When both the appellant/husband and respondent/wife are engaged in war of words, abuse and vulgar criticism of family members remains without any remorse, it is not worthy to retain their marital relationship.

17. Therefore, the marital tie, which has become worthless and deadwood is bound to be dissolved. Therefore, without weighing who has caused more

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cruelty than the other, this Court allows this appeal holding that it is not the cruelty alleged by the appellant alone, also the cruelty caused by the respondent on the appellant put together has sufficiently injured the marital bond. Therefore, this Court is forced to dissolve the marriage.

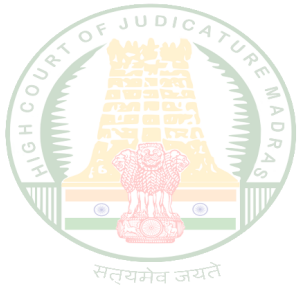
18. In the result, the order of the trial Court dated 19.10.2022, dismissing the H.M.O.P. is set aside. This Civil Miscellaneous Appeal is allowed and decree of divorce dissolving the marriage held between the appellant and the respondent on 03.11.2017 is granted. There shall be no order as to costs.

19. The decree of divorce and the observation made in this appeal shall not stand in the way of the respondent to pursue her criminal complaint against the appellant for cruelty and dowry harassment. They are distinct offences and to be tried in accordance with law without being influenced by the observation made in this appeal.

Index : Yes
NCC : Yes / No
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[G.J., J.] & [C.K., J.]
23.02.2024

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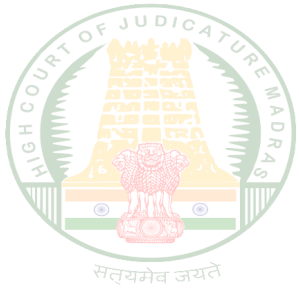
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To

The Judge,
Family Court,
Srivilliputhur.

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DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

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PRE-DELIVERY JUDGMENT MADE IN
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