

C.M.S.A(MD).Nos.20 and 21 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2023

Pronounced on : 01.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.S.A(MD).Nos.20 and 21 of 2021

Ashok @ Premnath

...Appellant in both CMSAs

Vs.

S.Usha Bhuvanaswari

...Respondent in both CMSAs

PRAYER in C.M.S.A(MD)No.20 of 2021: Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act 1956 r/w Order 41 Rule 4 and Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 07.12.2019 made in H.M.C.M.A.No.3 of 2019 on the file of the Additional District Judge, Fast Track Court, Paramakudi, confirming the fair and decretal order dated 18.01.2019 made in H.M.O.P.No.16 of 2017 on the file of the Sub Court, Mudukulathoor and allow this Civil Miscellaneous Second Appeal.

PRAYER in C.M.S.A(MD)No.21 of 2021: Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act 1956 r/w Order 41 Rule 4 and Section 100 of the Civil Procedure Code, to set aside the judgment and decree dated 07.12.2019 made in H.M.C.M.A.No.4 of 2019 on the file of the Additional District Judge, Fast Track Court,



Paramakudi, confirming the fair and decreetal order dated 18.01.2019 made in H.M.O.P.No.40 of 2017 on the file of the Sub Court, Mudukulathoor and allow this Civil Miscellaneous Second Appeal.

For Appellant : Mr.S.Muthukumar in both CMSAs
For Respondent : Mr.B.Arun in both CMSAs

COMMON JUDGMENT

These Civil Miscellaneous Second Appeals are preferred against the common judgment and decree dated 07.12.2019 made in H.M.C.M.A.Nos.3 of 2019 and 4 of 2019 on the file of the Additional District Court (FTC), Paramakudi, confirming the common judgment and decree dated 18.01.2019 passed in H.M.O.P.Nos.16 of 2017 and 40 of 2017 on the file of the Subordinate Court, Mudukulathoor.

2. The appellant is the husband and the respondent is the wife.

3. The appellant is petitioner in H.M.O.P.No.16 of 2017 and respondent in H.M.O.P.No.40 of 2017 on the file of the Subordinate Court, Mudukulathoor.

4. For the sake convenience, the parties are referred as



petitioner/husband and respondent/wife as adopted in H.M.O.P.No.16 of 2017 on the file of the Subordinate Court, Mudukulathoor.

5. It is the case of the petitioner that the petitioner and the respondent are husband and wife and their marriage was solemnized on 27.08.2015. At the time of marriage 17 sovereign gold jewels and seer articles were given. After marriage, the petitioner and the respondent were living happily for 10 days. Thereafter, the respondent used to talk frequently through cellphone and insisted the petitioner for separate life. The respondent used to talk with her mother commenting upon the petitioner as if he looks to be an old man and bad smell from mouth. The respondent used to ignore the cohabitation and she did not allow for consummation. The respondent demanded money from the petitioner and used to make frequent quarrels if not paid. The respondent disrespected the parents of the petitioner and the petitioner by scolding with untold words in the public place. Moreover, the respondent filed complaint before the All Women Police Station Keelakarai against the petitioner and his family members alleging demand of dowry and harassment. She filed DVC.No.1 of 2016 and M.C.No.4 of 2016 before the Judicial Magistrate Court, Mudukulathoor seeking maintenance. By the acts of the respondent, she caused mental cruelty to the petitioner. The petitioner



suffered not only from mental strain, but also physical strain. The respondent left the matrimonial home. There is no possibility of reunion.

Hence, the petitioner has filed the petition in H.M.O.P.No.16 of 2017 against the respondent seeking for divorce.

6. It is the case of the respondent/wife that the marriage between the parties solemnized as per Hindu rites and customs is admitted. At the time of marriage 17 sovereign gold jewels to respondent, 5 sovereign gold to petitioner and cash of Rs.1,00,000/- with seer articles worth Rs.1,00,000/- were given to the petitioner. The respondent denied the allegations that the respondent used to talk through cell phone and to make frequent quarrels with petitioner and that she neglected the consummation. The petitioner is a mechanic and he used to stay in his mechanic shop many days. On enquiry, the petitioner had illicit intimacy with another girl named Selvarani. When questioned this, the petitioner beat and harassed the respondent. The respondent did panchayat with the assistance of elders. The petitioner is in habit of consuming liquor and harassed the respondent by demanding more dowry. On 22.12.2015 at 8.00 a.m. the petitioner and his parents and sister quarreled with the respondent and attacked her with wooden logs and confined her in a dark room without giving food. They attempted to kill her with a rope.



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Fortunately, the respondent escaped and gave a police complaint before the All Women Police Station Keelakarai and the same was registered in Crime No.14 of 2015. The respondent has also filed D.V.C.No.1 of 2016 and M.C.No.4 of 2016 before the Judicial Magistrate Court, Mudukulatoor seeking shelter and maintenance. As a counter, the petitioner filed the H.M.O.P.No.16 of 2017 seeking divorce with false allegations and on ill advise of his parents and family members. The respondent is always ready and willing to live together with the petitioner and she has filed the petition in H.M.O.P.No.40 of 2017 for restitution of conjugal rights.

7. During enquiry before the Trial Court, both parties have conducted joint trial in both petitions and the evidence was recorded in H.M.O.P.No.16 of 2017. The petitioner/husband examined himself as P.W.1 and examined one of his customer to mechanic shop as P.W.2 and marked 7 exhibits as Ex.P.1 to Ex.P.7. The respondent/wife has examined herself as R.W.1 and also examined three other witnesses as R.W.2 to R.W.4 and also marked 5 exhibits as Ex.R.1 to Ex.R.5.

8. After hearing both and after considering both side evidences, the learned Subordinate Judge, Mudukulathur was not inclined to grant



divorce and dismissed the petition in H.M.O.P.No.16 of 2017. But, the Trial Court allowed the petition in H.M.O.P.No.40 of 2017 filed by the respondent/wife for restitution of conjugal rights by passing common order dated 18.01.2019.

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9. Aggrieved by the said common judgment and decree, the petitioner/husband has preferred Civil Miscellaneous Appeals in H.M.C.M.A.Nos.3 of 2019 and 4 of 2019 before the Additional District Court (FTC), Paramakudi. The First Appellate Court after hearing both and after considering the material records passed judgment and decree dated 07.12.2019 dismissing the Civil Miscellaneous Appeals and confirmed the common judgment and decree dated 18.01.2019 passed in H.M.O.P.No.16 of 2017 and H.M.O.P.No.40 of 2017.

10. Challenging the common judgment and decree of the First Appellate Court, the petitioner/husband has preferred these Civil Miscellaneous Second Appeals and the same have been admitted on file on the following substantial questions of law:-

"i) Whether the Courts below were justified in allowing restitution of conjugal rights in the given circumstances of the case as against the own



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admissions of the respondent herself especially when the respondent treated her husband in a cruel manner and instituted criminal proceedings against her husband and his family under Domestic Violence Act and section 498 of Indian Penal Code?

ii) Whether the Courts below are wrong in not considering the impact of criminal proceedings instituted by the respondent against the appellant and other proceedings under Domestic Violence Act are themselves act of cruelty in the fact and circumstances of the case warranting grant of divorce?"

11. The learned counsel for the appellant/husband has placed arguments that the Courts below have not considered the allegation that the respondent/wife compelled the petitioner to get separated from family and by her attitudes she has not consider the petitioner as husband. They had only ten days of matrimonial life and thereafter, for the past 4 years they remained separately and thereby developed their own lifestyle. The matrimonial life was dead. The Courts below have not considered the denial of consummation by the respondent/wife, which amounts to cruelty. The repeated acts of torture by the respondent/wife upon the petitioner/husband and his family members by filing criminal proceedings alleging dowry violence amount to cruelty. The respondent/wife insulted and humiliated the petitioner/husband after the



marriage. By the acts of the respondent/wife in insulting the petitioner in public place and also in filing criminal proceedings alleging dowry harassment she caused mental cruelty to the petitioner. Further, they are living separately years together and there is no possibility of reunion. Therefore, the finding of the Courts below may be set aside and these Civil Miscellaneous Second Appeals may be allowed.

12. Per contra, the learned counsel for the respondent/wife has vehemently argued that the marriage took place on 27.08.2015 and the petitioner/husband filed the petition for divorce on 21.03.2016 i.e., within a year and therefore, the petition for divorce is not maintainable as per the Section 14 of the Hindu Marriage Act. Except the petitioner, his family members were not examined to substantiate his case that the respondent/wife insulted and misbehaved him and his family members in his house itself. The petitioner examined one of his customer to his mechanic shop as P.W.2, who did not directly know the affairs of family of the petitioner. The respondent/wife was assaulted by the petitioner and his family members and hence, she lodged police complaint to safe her life and the same could not cause any cruelty on the petitioner. The act of assault by the petitioner and his family members were established by the respondent/wife through R.W.2 and R.W.3 and R.W.4. Though R.W.2 is



her mother, R.W.3 and R.W.4 are third persons, who conducted Panchayat between the parties. The filing of D.V. case and M.C case by the respondent/wife will not amount to cruelty and the initiation of such proceedings are for vindication of the rights of the spouse. The Courts below have correctly appreciated the evidence adduced on both sides and they have arrived at correct conclusion and therefore, the concurrent finding of the Courts below need not be interfered and there is no question of law in favour of the petitioner/husband and therefore, prayed that these Civil Miscellaneous Second Appeals may be dismissed. In support of his argument, the learned counsel for the respondent/wife has relied on the judgment dated 12.07.2023 passed by this Court in C.M.S.A(MD)No.15 of 2011, wherein it is held in paragraph No.19 as follows:

“19.....The litigation initiated by the wife is only to protect her property rights and her custody of her son. When the initiation of such proceedings is for the vindication of her rights, the said proceedings can never be considered to be a ground for mental cruelty.....”

13. Heard the arguments of both and perused the material records of the case. It is admitted by both that the marriage between the petitioner and the respondent is arranged marriage and at the time of



marriage gold jewels and seer articles were given. It is further admitted that at the time of marriage, the respondent was studying 4th year in the Homeopathy branch and the petitioner was a mechanic.

14. On perusal of records, it is clear that the marriage between the petitioner and the respondent was solemnized on 27.08.2015. The petitioner has filed the petition for divorce on 21.03.2016 within completion of one year from the date of marriage. If so, the petition for divorce filed by the petitioner/husband is hit by Section 14 of the Hindu Marriage Act, as rightly pointed out by the learned counsel for the respondent/wife. Section 14 of the Hindu Marriage Act reads as follows:

“14. No petition for divorce to be presented within one year of marriage : - (1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, ²⁸ [unless at the date of the presentation of the petition one year has elapsed] since the date of the marriage: Provided that the court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented ²⁹ [before one year has elapsed] since the date of the marriage on the ground that the case is one



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of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it pronounces a decree, do so subject to the condition that the decree shall not have effect until after the ³⁰ [expiry of one year] from the date of the marriage or may dismiss the petition without prejudice to any petition which may be brought after the ³¹ [expiration of the said one year] upon the same or substantially the same facts as those alleged in support of the petition so dismissed.

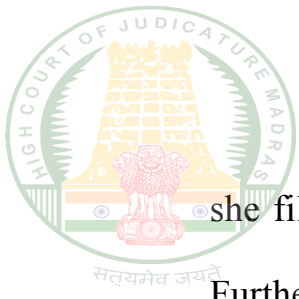
(2) In disposing of any application under this section for leave to present a petition for divorce before the [expiration of one year] from the date of the marriage, the court shall have regard to the interest of any children of the marriage and to the question whether there is a reasonable probability of a reconciliation between the parties before the expiration of the [said one year]".

The marriage is the union of a man and woman that imposes certain marital duties and confers certain legal rights on each of them. Nowadays the couples start thinking of getting divorce whenever there is disagreement between them. The temperamental differences between the spouses could be resolved over time and should not be used as grounds for divorce. As per Section 14 of the Hindu Marriage Act, no Court shall



entertain a divorce petition before one year of the marriage. Though the petitioner alleges against the respondent that she insulted and disrespected him and his family members, he has not established the same by examining any of his family members, as rightly pointed out by the Trial Court. The petitioner examined P.W.2, who is admittedly a customer to his mechanic shop. It is not suffice to prove his case.

15. On the side of the petitioner/husband, the learned counsel for the petitioner mainly argued that the respondent filed the criminal complaint against the petitioner and his family alleging dowry harassment and also filed D.V. case and M.C. case against the petitioner, which amounts to cruelty made over the petitioner. The respondent explained for filing of criminal complaint that she was assaulted with wooden log by the petitioner and his family members. This was established by the respondent by examining R.W.3 and R.W.4 and by producing Ex.P.3 letter issued by their community and Ex.P.5 Medical Register extract. The petitioner has not examined any other witnesses or has produced any material to doubt the testimony of the R.W.3 and R.W.4. R.W.3 and R.W.4 have clearly deposed supporting the case of the respondent/wife. The Courts below correctly held that Ex.P.5 proved the assault on the respondent before the filing of police complaint and so,



she filed the complaint to protect her life. There is nothing wrong in it.

Further, as held by this Court in its judgment relied on by the respondent side, the initiation of D.V. case and M.C case only to protect her rights and it should not be held as cruelty. The petitioner has not established that the filing of such proceedings amount to cruelty.

16. The next argument advanced by the petitioner is that the petitioner and the respondent are living separately for the past 9 years and there is no chance for reunion. The separate living is only because of filing of the petition for divorce by the petitioner. On perusal of records, the petitioner has straightly filed the petition for divorce without any efforts for joint living. As already stated, the petition for divorce is filed within a year of marriage and so, such petition is not maintainable in law. The respondent filed the counter stating that she is always ready and willing to live together with the petitioner. Further, the respondent stated that she took efforts for compromise talk with assistance of elders. To prove the same, she examined R.W.3 and R.W.4, who also deposed that they made attempts for Panchayat for joint living, but the petitioner has not obliged. The respondent/wife has proved her stand that she has taken sincere efforts for reunion and therefore, she is entitled to relief of conjugal rights.



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17. From the above facts and circumstances, the petitioner/husband has not established his case and therefore, the substantial question of law are decided against the petitioner/appellant herein. This Court is of the considered view that the case of the appellant is not proved by him as correctly decided by the Trial Court and confirmed by the First Appellate Court. The concurrent finding of the Courts below does not warrant interference by way of these Civil Miscellaneous Second Appeals. Thus, these Civil Miscellaneous Second Appeals fail.

18. In the result, these Civil Miscellaneous Second Appeals are dismissed. The common judgment and decree dated 07.12.2019 made in H.M.C.M.A.Nos.3 of 2019 and 4 of 2019 on the file of the Additional District Court (FTC), Paramakudi, confirming the common judgment and decree dated 18.01.2019 made in H.M.O.P.Nos.16 of 2017 and 40 of 2017 on the file of the Subordinate Court, Mudukulathoor are confirmed. No costs.

01.11.2023

NCC : Yes / No
Index : Yes / No
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To

- 1.The Additional District Judge,
Fast Track Court,
Paramakudi.
- 2.The Sub Court,
Mudukulathoor.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

vsd

Pre - Delivery Judgment made in
C.M.S.A(MD).Nos.20 and 21 of 2021

01.11.2023