

IN THE COURT OF THE I ADDITIONAL DISTRICT JUDGE, TIRUPPUR

Present : **Thiru S. Govindharajan, B.L.,**
I Additional District Judge.

Wednesday, the 5th day of August' 2020

H.M.C.M.A. No. 1/2018

T. Veerabahu ... Appellant / Petitioner
//Versus//

D. Gomathi ... Respondent / Respondent

(On appeal against the Fair and Final Order passed in HMOP.No.54/2012 dated 07.07.2017 on the file of the Principal Sub Court, Tiruppur)

Between

T. Veerabahu ... Petitioner

And

D. Gomathi ... Respondent

This appeal was originally taken on file by this Court in civil miscellaneous appeal H.M.C.M.A.1/2018 and came up for final hearing on 27.07.2020 through “*Jitsi app.,*” in the presence of Advocate Thiru.K.Janardhanan, appearing for the appellant and Tmt.N.Poongodi, counsel appearing for the respondent, and upon hearing the arguments of both the sides and upon perusing all the relevant materials and having stood over till this day for consideration, this court delivers the following:

ORDER

This appellant/husband has filed the present civil miscellaneous appeal against fair and decretal order in H.M.O.P. 54/2012, 07.07.2017 on the file of Principal Sub Court, Tiruppur.

The relief claimed before the Trial court:-

Application under Section 13 (1) (ia) of Hindu Marriage Act for grant of divorce by dissolving the marriage dated 09.05.2010 between the appellant and the respondent.

The case of the petitioner before the trial court is as follows:

The marriage between the petitioner and the respondent took place at Sri Ganapathi Kalyana Mahal on 09.05.2010. Out of the wedlock a male child was born on 03.02.2011. The petitioner is working in private concern at Tiruppur and with his meager income he was taking care of the respondent and his mother. But, the respondent did not take care and show any respect to the petitioner and his family elders. She fought by filthy words for petty reasons with the petitioner and go to her parents native place Sankarankoil without any intimation to her husband and her mother-in-law. She did not take care to cook and serve food to the petitioner. So, the petitioner suffered lot. The “Valaikappu” function for the respondent celebrated in a very grand style at the petitioner's residence on 09.12.2010, on the same day also the respondent fought with the petitioner and asked him that she will not come back to the matrimonial house. She did not inform to the petitioner about the birth of a male child at Sankaran koil on 03.02.2011. The petitioner was informed about the child birth through a close relative and he went to Sankaran Kovil to see the child but she did not allow the petitioner and his mother to touch the child and cheated them. The respondent came for the naming ceremony of the child on 05.06.2011 and fought with the petitioner and went out. Thereafter, there is no information from her and also no consortium between with them. The petitioner tried several times to live with her through mediation of Panchayatars but the respondent has not like to live with him and she threatened him by alleging false complaint in the police station against him. So, the petitioner prayed divorce and filed this petition.

The case of the respondent before the trial court is as follows:

At the time of marriage, the respondent's parents gave 30 sovereigns of gold and Rs.25,000/- by cash to the petitioner as dowry as per their demand. But the next day of marriage, the petitioner demanded another 5 sovereigns of gold as dowry. The respondent was driven out by the petitioner and his family members to her parental home while she was two months pregnancy. Thereafter, the petitioner informed the respondent through phone not to come back without 5 sovereigns of gold.

Meanwhile, several panchayats has been conducted by the parents of the respondent and also spent amount for “Valaikappu” function. Even they informed about the birth of child immediately the petitioner and his parents have not come to see the child. The petitioner and his family members have gone to naming ceremony of the child in the evening of the day and demanded 30 sovereigns of gold and Rs.25,000/- by cash as dowry. Thereafter the respondent tried to live with the petitioner but he refused to liver with her, so she gave complaint against him in All Womens Police Station at Sankarankoil. During the enquiry she came to know about the filing of this petition. The petitioner gave cruelty to the respondent by demanding and compelling to get dowry. But the respondent wishes to live with the petitioner. Hence, the petition is liable to be dismissed with costs.

Before the lower court the petitioner has been examined as Pw1 and two independent witnesses have been examined as Pw2 and Pw3. The evidence of Pw3 was eschewed since he has not turned up for cross examination and exhibits P1 to P13 have been marked. On the side of the respondent, the respondent has been examined as Rw1 and one witness as Rw2 and no exhibits have been marked.

Grounds of appeal:

The petitioner stated that the Fair and Final Order of the Trial Court are against law and has not appreciated the oral and documentary evidence, did not consider the pleadings in the petition filed by the appellant. From the date of marriage the respondent was abusing the petitioner and his family members in filthy language and will not cook food and would make a big scene when questioned about the behaviour of the respondent. She used to run away to her parents house without informing the appellant or his family members and was hating the appellant from the core of her heart. She was not respecting either the appellant or his parents. Even she at the time of Valaikapu function picked up a quarrel with the appellant and openly declared that she will not return to the matrimonial house. Even the birth of the child was not informed to the appellant or his family members. When the appellant and his mother went to see the child the respondent became very haughty and she did not allow the

appellant and his mother to touch the baby. She resided only six months with the appellant and left the marital home with her all belongings. When the appellant tried for reunion through the mediators, she threatened him that she is not willing to lead a marital life with him and if he tries for mediation she will give a false complaint to the police against him and his family members. The learned Subordinate Judge did not appreciate the documentary evidence produced by him. The respondent had made severe mental and physical agony to the appellant. The respondent after filing of the main petition has preferred a complaint before the All Women Police Station, Sankarankoil and after through enquiry the police officials warned the respondent not to indulge in unlawful activities. On the same day the appellant as well as the respondent exchanged the jewels given to them including the “Thalli Chain” and openly declared she will not reside with the appellant. The respondent being aggrieved by the same in order to threaten the appellant filed a petition before the Judicial Magistrate Court to register a FIR against the appellant and his family members and the same was taken on file. In Crime No.12/2012 FIR was lodged against the appellant, his mother, sister and his relatives. After a thorough enquiry the police officials filed a report before the Judicial Magistrate Court, Sankarankovil stating the complaint was referred as mistake of fact. Again she filed M.C.16/2012 with false and untenable allegations contrary to the allegations made in the complaint In Cr.No.12/2012. Even in the said petition the respondent added the relatives of him without any reason or whatsoever. Hence he filed a stay petition before the Hon'ble High Court, Madras and the appearance of him and his family members was dispensed with. He preferred another Crl.O.P.(MD) No.13911 of 2016 to expedite the trial in M.C.16 of 2012 and stated that he is ready to pay a sum of Rs.7,000/- as claimed by the respondent. The learned Judge had passed an order stating the claim of maintenance of Rs.7,000/- has been accepted by the petitioner, there may not be any difficult for the court below to dispose of M.C.16/2012 within a limited time. Accordingly the learned Judicial Magistrate, Sankarankovil is directed to dispose of M.C.16 of 2012 within a period of one month from the date of receipt of counter

affidavit or memo by the petitioner. As per the order of the Hon'ble High Court, Madurai, he filed a memo before the Judicial Magistrate, Sankarankovil but the learned Judge without considering the order of the Hon'ble High Court passed protection orders and granting maintenance of Rs.7,000/- per month under Section 18 and 20 of Domestic Violence Act. Against the order of the Judicial Magistrate Court, Sankarankovil, he preferred an appeal before the I Additional District Sessions Judge, Tirunelveli and he had allowed the same stating the order passed by the learned Judicial Magistrate is without any substance and against the order passed by Hon'ble High Court in Crl.O.P.13911 of 2016 and hence the direction of learned Judicial Magistrate so far as Relief No.1 has to be set aside and accordingly set aside. The order in the said M.C.16/2012 to grab usurious amount from him, the respondent filed a petition under Section 24 of the Hindu Marriage Act and the same was numbered in I.A.1008/2015 for interim maintenance and sent notice to him. He and the respondent were residing separately for the past seven years. He is paying the monthly allowances regularly without fail. The appellant has clearly proved the cruelty, ill treatment etc meted out to him by the respondent.

The point for consideration in this present civil miscellaneous appeal is that whether the order of the Trial Court in dismissing HMOP.54/2012 dated 07.07.2017 is sustainable?

The appellant namely the husband has filed the application for divorce on the ground of cruelty against the respondent and after contest the Trial court was pleased to dismiss the petition by holding that the ground of cruelty was not made out, besides holding that there is no pleadings in the petition. As against the said order the appellant/husband has preferred the present Civil Miscellaneous Appeal.

According to the appellant he has specifically pleaded in the petition about the act of cruelty allegedly committed by the respondent and that has been substantiated by him through both oral and documentary evidence, which was not properly appreciated by the Trial court.

On the other hand it is the contention of the respondent namely the wife that the order of the Trial court in dismissing the petition for divorce is just and reasonable and the appellant has not made out a case for divorce. According to the respondent all the evidences adduced by the husband both oral and documentary in respect of the alleged cruelty are subsequent to the filing of main petition and the said subsequent developments cannot be taken by the court while disposing the main petition. On that ground the counsel for the respondent justifies the order of the Trial court in dismissing the main petition.

This court has perused the pleading in the petition as well as the oral evidence adduced by both the parties and also the documents filed. From the perusal of the petition for divorce the present appellant namely the husband has stated in Para 5 of the petition about the cruelty committed by the respondent not only towards the husband but also against his mother. Likewise it is also stated in the petition that the respondent namely the wife has not cared to cook and to serve food and also stated that the wife will deliberately pickup quarrel with the petitioner by using unparliamentary words and she will often go to her parent's house at Sankarankoil.

In this aspect, the petitioner namely Pw1 has deposed about the said attitude of the wife in his oral evidence. But surprisingly the Lower court in Para 10 of the order

“மனுதாரர் அவரது சாட்சியத்தில் எதிர்மனுதாரர் மீது கூறியுள்ள குற்றச்சாட்டுக்களில் எதிர்மனுதாரர் தன்னையும், தனது தாயாரையும் தரக்குறைவாகத் திட்டுவார் என்று கூறியுள்ளதைத் தவிர அவரது பிரமாணவாக்குமூலத்தில் கூறியுள்ள குற்றச்சாட்டுக்கள் எதனையும் மனுவில் குறிப்பிடவில்லை. எனவே, மனுவில் இம்மனுதாரர் அவருக்கு எதிர்மனுதாரரால் இழைக்கப்பட்டதாகக் கூறியுள்ள சங்கதிகளுக்கும், அவரது சாட்சியத்திற்குமிடையே முற்றிலும் முரண்பாடு உள்ளது தெரியவருகிறது..... அவ்வாறு எந்த ஒரு சங்கதியையும் மனுதாரர் அவருடைய மனுவில் தெரிவிக்காதது மனுதாரரின்

அடிப்படை வழக்கினையே பாதிக்கின்றதாக இந்நீதிமன்றம் தீர்மானிக்கின்றது. மனுவில் சொல்லப்படாத சங்கதிகளை மனுதாரர் அவருடைய சாட்சியத்தில் கூறியுள்ளதற்கு எவ்வித முக்கியத்துவம் அளிக்க முடியாது என்பதோடு மட்டுமல்லாமல் எதிர்மனுதாரர் மீது மனுதாரர் கூறியுள்ள குற்றச்சாட்டுக்கள் மீது சந்தேகம் தோற்றுவிக்கக்கூடிய வகையில் மேலும் ஏதாவது ஒரு காரணத்தைக் கூறி எதிர்மனுதாரரிடமிருந்து விவாகரத்து பெற மனுதாரர் முயற்சிக்கின்றார் என்ற எதிர்மனுதாரர் தரப்பு வழக்கையும் வலுவூட்டும் வகையில் அமைந்துள்ளதாக இந்நீதிமன்றம் கருதுகின்றது".

From the perusal of above said reasoning by the Trial court it is clear that it has dismissed the divorce petition on the ground that there is no pleading in the petition in respect of the cruelty and the evidence adduced by the husband is not supported by pleading. As already pointed out in Para 5 of the main petition the husband has specifically pleaded about the act of cruelty committed by the respondent and he has stated in his oral evidence, not only the about said acts but also the subsequent developments between the parties. It is pertinent to note that subsequent to the filing of petition for divorce, the respondent has filed a Criminal Complaint on 31.03.2012 before AWPS Sankarankoil. The date of petition for divorce is 23.02.2012. The date of marriage between the parties is 09.05.2010. Within 2 years from the date of marriage differences erupted between the parties which resulted in litigation between the parties.

When the husband has filed petition for divorce in the year 2012, surprisingly the wife has filed an application u/S.9 of Hindu Marriage Act for restitution of consequential rights before Sub Court, Sankarankovil in HMOP.51/2016 after four years. The said application U/S.9 filed by the wife was came to be dismissed and as

against which she has filed appeal before the District Court, Tirunelveli and it is pending and the said fact is admitted between both the parties.

Not only, that the police complaint given by the wife on 31.03.2012 was closed by the concerned police as mistake of fact and in the year 2019 by way of protest petition the wife has initiated criminal proceedings and it is pending against the husband before the JM Court, Sankarankovil. Not satisfied, the wife has also initiated a domestic violence petition in MC.16/2012 before JM, Sankarankovil and in that proceeding the husband has agreed to pay Rs.7,000/- per month as maintenance to the wife and admittedly it is being paid by the husband till date. It is also to be noted that the above petition under domestic violence was filed not only as against the husband but also against his relatives.

The present appellant and his relatives have filed Criminal Appeal 12/2017 on the file of I Additional District and Sessions Court, Tirunelveli and the said competent court by order dated 20.10.2017 has allowed the said appeal and thereby the order of the Judicial Magistrate Court, Sankarankovil in respect of the protection orders were reversed. In the said order it has been held that there is no domestic violence committed by the present appellant and the demand of dowry as alleged by the wife has not been proved.

From the perusal of the oral evidence by Pw1 and Rw1, it is clear that the parties have lived under one roof just for 2½ months and since the wife conceived she returned back to Sankarankovil, after that there is no reunion between the parties.

It is settled position of law that in matrimonial matters the subsequent conduct of the parties have to be taken into consideration while disposing the litigation between them. The findings of the Trial court that the documents filed by the husband in respect of the various litigations are subsequent in nature and on that ground they cannot be considered is unsustainable.

If really the wife has not committed any cruelty she would not have filed protest petition as against the closure report filed by the AWPS. Likewise, the filing of domestic violence petition against the husband as well as her in-laws will go to

prove the attitude of the respondent in settling the matter. Not only that, the filing of Section 9 of application for restitution after a lapse of four years also goes to prove that only for the sake of filing it was filed. The counsel for the appellant has relied upon the decision of Hon'ble Madras High Court dated 20.11.2006 (A.Viswanathan Vs. G.Lakshmi @ Seetha in CMA.1558/2000). The said decision is by a Division Bench of our Hon'ble High Court and in Para 24 it is held,

“It can be clearly seen that the acts of cruelty had become routine day-to-day affairs and not an isolated affair since 1995 and were not restricted to isolated instances. This has not been rightly assessed by the Family Court. The material facts as to cruelty have been pleaded and the insistence of the Trial Court is for pleading evidence which is legally impermissible. It is only that all material factors needed to clothe the cause of action have to be pleaded while material particulars need not be pleaded”.

Likewise he has also relied upon a Judgment of Hon'ble Supreme Court dated 04.07.2012 in Civil Appeal 4905/2012 (Vishwanat Vs. Sau.Sarla Vishwanat). In the said decision in Para 36, our Hon'ble Apex Court has held that in matrimonial matters the subsequent events can be taken into consideration.

Likewise in 2015-4- L.W.671 the Apex Court in K.Srinivas Vs. Sunita on 19.11.2014 has held that “If a false criminal complaint is preferred by either spouse it would constitute matrimonial cruelty, entitle other spouse to claim divorce”. On the other hand, the counsel for the respondent has relied upon a Judgment reported in 2017– 2-L.W Page 673 K.Kannusamy Vs.T.Sumathi. In the said decision it has been held that Cruelty must be strictly proved.

As already discussed in the present case the cruelty on the part of respondent has been proved not only by the pleadings but also by the documents filed by the husband. The contention of the counsel for the respondent that her client has filed

police complaint and domestic violence petition only in order to have a reunion cannot be believed, because in the domestic complaint she has arrayed not only her husband but also other in-laws as accused. Hence, the said contention raised by the respondent are not sustainable.

From the above, as already pointed out that there are enough pleadings in the petition in respect of cruelty and the said pleadings is supported by oral evidence of Pw1. Furthermore, the reasoning of the Trial court that the subsequent developments cannot be looked into is erroneous as held by the decisions of our Hon'ble Supreme Court and High Court.

From the above said discussions, this court comes to conclusion the decision of the Trial court in dismissing the petition for divorce is not sustainable and deserves to be reversed, since the ground of cruelty is proved.

In the result, the Civil Miscellaneous Appeal is allowed by reversing the Order of the Trial Court dated 07.07.2017 in HMOP.No.54/2012 on the file of Principal Sub Court, Tiruppur by granting a decree of divorce to the parties by dissolving the marriage dated 09.05.2010 on the ground of cruelty and in the circumstances of the appeal there is no order as to costs.

Dictated to the stenographer, directly computerized by her, corrected and pronounced by me in the open Court on this, the 5th day of August' 2020.

I Additional District Court,
Tiruppur.

Fair / Draft Order

CMA.No.1/2018

in

HMOP.No.54/2012

Dated : 05.08.2020

I Additional District Judge,
Tiruppur.