IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 20 / 11 / 2024

JUDGMENT DELIVERED ON : 4 / 06 / 2025

CORAM :

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

CMA NOS.1038 AND 1039 OF 2024
AND
CMP NO.9775 OF 2024 IN CMA NO.1038 OF 2024

CMA NO.1038 OF 2024

[redacted] ... Appellant / Respondent

Vs.

[redacted] ... Respondent / Petitioner

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1984 read with Section 28 of Hindu Marriage Act, 1955 praying to set aside the fair order and decree dated December 16, 2023 made in H.M.O.P.No.702 of 2021 on the file of the Third Additional Principal Family Court, Chennai.

For Appellant : Mr.V.Kamalanathan
for Mr.N.Manoharan

For Respondent : Ms.R.Mahalakshmi

CMA NO.1039 OF 2024

[redacted] ... Appellant / Petitioner

Vs.

[redacted] ... Respondent / Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1984 read with Section 28 of Hindu Marriage Act, 1955 praying to set aside the fair order and decree dated December 16, 2023 made in O.P.No.2237 of 2021 on the file of the Third Additional Principal Family Court, Chennai.

For Appellant : Mr.V.Kamalanathan
for Mr.N.Manoharan

For Respondent : Ms.R.Mahalakshmi

COMMON JUDGMENT

R.SAKTHIVEL, J.

[redacted] are husband and wife, whose marriage was solemnized on September 16, 2015. They were blessed with a male child, namely [redacted] on July 27, 2016. Some disputes shot up between the couple and hence the husband filed a petition on October 4, 2017

under Section 13 (1) (i-a) of 'Hindu Marriage Act, 1955' ['H.M. Act' for short] seeking divorce before the Family Court, Chengalpattu and the same was taken on file in F.C.O.P. No.155 of 2017. Thereafter, as per the Order passed by this Court in Tr.C.M.P. No.975 of 2017 dated March 6, 2018, the case in F.C.O.P. No.155 of 2017 was transferred to Sub Court, Tambaram and renumbered as H.M.O.P. No.348 of 2018. Again as per the Order of this Court dated March 29, 2021 made in Tr.C.M.P. No.120 of 2021, the matter was transferred to Principal Family Court, Chennai and renumbered as H.M.O.P. No.2237 of 2021. Thereafter, as per the Order of the learned Principal Family Judge, Chennai dated February 20, 2023, the matter was transferred to 'the III Additional Principal Family Court, Chennai' ['the Family Court' for brevity], where the respondent-wife had filed for restitution of conjugal rights in H.M.O.P.No.702 of 2021 on February 3, 2021. Both the Original Petitions were tried separately. In H.M.O.P.No.2237 of 2021 filed by the husband, Ex-P.1 to Ex-P.10 and Ex-R.1 to Ex-R.11 were marked. In H.M.O.P.No.702 of 2021 filed by the wife, Ex-P.1 to Ex-P.11 and Ex-R.1 to Ex-R.33 were marked. In both the cases, only the parties examined themselves; no independent witness was examined. After full-fledged trial, separate Judgments were pronounced

on the same date *i.e.,* on December 16, 2023, ruling in favour of the wife; petition for divorce was dismissed and that for restitution of conjugal rights was ordered. Feeling aggrieved by the same, the husband has filed the instant Civil Miscellaneous Appeals.

2. For the sake of convenience, henceforth, the parties will be referred to as per their array in the Original Petition in H.M.O.P.No.2237 of 2021 *i.e.,* the husband will be referred to as the petitioner and the wife will be referred to as the respondent.

CASE OF THE PETITIONER / HUSBAND

3. The crux of petitioner's case is that the respondent / wife refused to live along with the petitioner's parents and demanded separate residence, creating conflicts. The respondent lived together with the petitioner only for 51 days in the 2 years following their marriage. The respondent ill-treated the petitioner saying that he hails from a village whereas she belongs to the city and she cannot live with the petitioner's family. The respondent used to leave for her parents' house very often without any justifiable cause. The respondent is highly quarrelsome and verbally abusive towards the petitioner and his parents. The petitioner was

employed in an Engineering College and used to come home by 7 in the evening. While so, the respondent forced the petitioner to return home by 5.00 pm at any rate which was quite impractical for the petitioner, and often threatened him of committing suicide. Further, she threatened him of lodging false complaints as if the petitioner and his family demanded dowry. During the pendency of both the said Original Petitions, the respondent lodged a Police Complaint against the petitioner and his parents containing defamatory and derogatory remarks; she alleged that the petitioner's father sexually harassed her, that the petitioner is flirting and physically intimate with various girls, and that both are perverts. Thus, the petitioner was constrained to move High Court for Anticipatory Bail. Later, the respondent filed D.V.C. No.47/2019, which was later quashed by this High Court. Subsequently, several complaints were made to various authorities, including the Collector, Superintendent of Police and Revenue Divisional Officer, Kanchipuram, alleging that her in-laws were preventing them from living together. However, she failed to attend the inquiries and all the cases were closed. The aforesaid acts of the respondent amounts to cruelty and has caused irreparable mental trauma to the petitioner. The petitioner believes reconciliation is impossible and

therefore, seek to dismiss of the petition filed by the respondent for restitution of conjugal rights and to allow the petition filed by him for divorce.

CASE OF THE RESPONDENT / WIFE

4. The case of the respondent is that after marriage, they lived at her in-law's house. Then, she became pregnant and as her in-laws showed no interest in conducting her *Seemantham* function, she moved to her parents' house. Out of their wedlock, a Male child was born on July 27, 2016.

4.1. As an outcome of mutual understanding, the petitioner's father arranged a separate residence for the couple at Madipakkam, Guduvanchery, which did not have a compound wall. Due to security concerns and inconvenience, the respondent requested her father-in-law to construct a compound wall and she temporarily moved to her parents' house on September 9, 2017. Then, as the respondent faced difficulties while travelling for her child's medical treatment from Chengalpattu to Chennai, she continued to stay at her parental home in Chennai, where she had better facilities. But her in-laws were not happy about it leading

to unpleasant situations and discords. Despite this, her relationship with the petitioner remained cordial.

4.2. When their child developed wheezing symptoms, she admitted him to SRM Hospital, but the petitioner discharged him against medical advice. She then took the child to Chennai for better treatment, which enraged her in-laws.

4.3. Growing misunderstandings, family interference, and ill advice from her in-laws strained their marriage. The respondent's mother-in-law forced her to leave the marital home on September 9, 2017 and later, filed a false police complaint against the respondent and her parents. During mediation, the couple had a positive interaction. Further, there arose some difficulty for the respondent in staying at her parents' house after her brother's marriage, making reunion and support of her husband an urgent requirement. Also keeping in mind the child's welfare, the respondent sought to allow the petition for restitution of conjugal rights and to dismiss the petition filed by the petitioner / husband seeking divorce.

FAMILY COURT

5. The Family Court, after analyzing the oral and documentary evidence available on record, held that the allegations levelled against the respondent / wife by the petitioner / husband, are not proved. As regards the sexual harassment complaint, it was of the opinion that the same was not investigated and was withdrawn, as the petitioner promised to live along with the respondent. Withdrawing the complaint in the above circumstance cannot lead to an inference that the complaint was a false one. Demanding a separate living from the joint family while facing sexual harassment by one of the members thereof, does not amount to cruelty. It finally concluded that the respondent has not committed any act of cruelty against the petitioner. Accordingly, the Family Court dismissed the Original Petition in O.P.No.2237 of 2021 filed for divorce and directed the respondent to restore the conjugal relationship with the petitioner within two months by allowing H.M.O.P.No.702 of 2021.

6. Feeling aggrieved by the order passed in both the Original Petitions, the husband has filed these Civil Miscellaneous Appeals.

ARGUMENTS

7. The learned counsel for appellant / petitioner (husband) would submit that the respondent lived along with the petitioner for only 51 days in the 2 years after their marriage. She refused to live with the petitioner without any justifiable cause. On September 8, 2017, she lodged a false complaint of dowry harassment leading to the petitioner filing for divorce. Upon filing for divorce, on October 6, 2017, the respondent and her party picked up quarrel with the petitioner and his family. Further, on October 27, 2017 the respondent lodged a false complaint with derogatory and defamatory remarks against the petitioner and the petitioner's father, which she later admitted as untrue and withdrew. The said act of the respondent amounts to cruelty. The Family Court failed to consider the said aspect and without any basis, wrongly concluded that the complaint of sexual harassment was *prima facie* true. The Order of the Family Court ordering restitution of conjugal rights is wrong and unfair because the respondent/wife left the matrimonial home on her own and repeatedly filed false complaints, making the marriage impossible to continue. The petitioner has suffered severe mental stress due to her actions but chose not to disturb the child's life, yet this was

wrongly seen as neglect. The couple has been living separately for more than seven years and there is no chance of reunion. Since the marriage has completely broken down, the Order passed by the Family Court in H.M.O.P. No.702 of 2021 and O.P.No.2237 of 2021 are liable to be dismissed. Accordingly, the learned Counsel prayed to allow these Civil Miscellaneous Appeals.

8. The learned Counsel for the respondent herein / respondent (wife) strongly refuted the contentions of the petitioner / husband and contended that her allegations are true and supported by her complaints lodged at Mylapore and Guduvanchery Police Stations. She reiterated that the father of the petitioner had sexually harassed her and unable to bear such harassment and other cruelties inflicted upon her, she was compelled to take legal action. She further submitted that, the petitioner had initially given an undertaking that he was willing to live with her and their minor child persuading the respondent to withdraw the sexual harassment complaint, but he has failed to keep up his word. Merely because the respondent withdrew the complaint, it cannot be said that the allegation of sexual harassment is false. Despite the respondent's efforts to maintain a cordial relationship, the petitioner continued to ill-treat and abuse her

both verbally and physically. The petitioner never allowed the respondent to live peacefully with him, yet the respondent remains willing to continue the marital relationship for the welfare of their child. Referring to the observation made by this Court in Paragraph No.16 of the Order dated March 29, 2021 in Tr. C.M.P. No.120 of 2021 [Ex-P.11 in H.M.O.P. No.702 of 2021], the learned Counsel submits that the respondent is ready and willing to live with the petitioner forgetting all the past events. The Family Court after considering the evidence available on record, rightly dismissed the petition for divorce and allowed for restitution of conjugal rights. There is no need to interfere with it. Accordingly, she prayed to dismiss both these Civil Miscellaneous Appeals.

DISCUSSION

9. Heard on either side. Perused the evidence available on record.

10. The points for consideration in these Civil Miscellaneous Appeals are whether the police complaint given by the wife against the husband and her father-in-law amounts to cruelty and whether the petitioner has made out a case under Section 13 (1) (i-a) of H.M. Act ?

11. The petitioner and the respondent alone were examined in this case. Perusal of their oral evidence would lead to the inference that they were living together for only two years after their marriage. The allegation against the respondent that she had totally been with the petitioner only for 51 days in the two years of their marital life is not supported by any credible evidence. Further it is natural for a newlywed wife to visit frequently her parents' home, where usually she would have grown up and spent her life so far. Further, soon after the marriage, the respondent got pregnant and it is usual for pregnant women to spend the later part of pregnancy at their mother's place. These cannot be termed as cruelty.

12. Another allegation against the respondent is that due to the pressure from the respondent, the petitioner was forced to quit his employment at college and join an IT Company. The same is also not supported by acceptable evidence.

13. The evidence available on record would show that till the child birth, the couple was leading a typical marital life with the usual wear and tear. After filing of this divorce petition, as evident from Ex-R.5

in H.M.O.P. No.702 of 2021 – Complaint and oral evidence of the respondent, the respondent preferred a complaint before All Women Police Station, Mylapore on October 27, 2017 making sexual allegations against her husband and father-in-law. She remarked both of them as perverts, alleged that her father-in-law sexually harassed her as well as that the petitioner was in casual relationships with various women.

14. On November 1, 2017, the respondent withdrew the said complaint vide Ex-R.8 in H.M.O.P. No.702 of 2021 – Letter, wherein the respondent, her parents as well as her brother have signed as witnesses. In Ex-R.8 in H.M.O.P. No.702 of 2021it has been specifically stated that in Ex-R.5 – Complaint, some averments against her husband and father-in-law have crept in without her knowledge. While so, the respondent now contends that only on the written assurance of the petitioner that he will reunite with the respondent, she withdrew the complaint. The Complaint Closure Report appears to make the said contention of the respondent probable.

15. But, thereafter, the petitioner failed to keep up his word; he did not reunite with the respondent as assured before the Police. In

these circumstances, the respondent ought to have been prudent and reopened the complaint and sought for investigation into the matter. But, she miserably failed to do so.

16. At this juncture, the learned Counsel for the petitioner would invite the attention of this Court to Ex-R.4 in H.M.O.P. No.702 of 2021 – Screenshot of Whatsapp Chat dated October 17, 2017, and would argue that the respondent herself admitted that everything is her fault and apologised to the petitioner about 10 days before making Ex-R.5 – Complaint and that in such a scenario, Ex-R.5 – Complaint could only be a false one. This Court has perused Ex-R.4 - Screenshot. It appears that the petitioner has received a message from a contact whom he has saved as "ANU". The respondent has denied the said message in her cross-examination. The burden is upon the petitioner to prove Ex-R.4 – Screenshot. It is true that the Indian Evidence Act, 1872 would not be strictly applicable to family court matters, in view of Section 14 of the Family Courts Act, 1984. But, said Section 14 does not dispense with the burden of proof. The burden remains upon the petitioner. But the petitioner has failed to discharge the said burden. The petitioner has not taken any steps to prove that the said contact from which he received such

a message, is his wife / respondent. Hence, the argument of the learned Counsel for the petitioner deserves to be rejected.

17. Be that as it may, whether the averments contained in Ex-R.5 – Complaint are true or not is a matter for police investigation and the truth can be found only in the trial. But there was no investigation in the first place. The averments remain unestablished. The averments made in Ex-R.5 are of such nature that unless proved, they amount to defamation, which in turn constitutes to mental cruelty. If really the said averments are true, the respondent ought to have taken prudent steps to prove her averments when the petitioner failed to reunite with her. Unsubstantiated or uncorroborated defamatory averments made in Ex-R.5, causes stigma and mental agony to the petitioner as well as his family, and in the facts and circumstances of this case amounts to cruelty.

18. Learned Counsel for the respondent / wife would invite the attention of this Court to observation made by this Court in Paragraph No.16 of the Order dated March 29, 2021 in Tr. C.M.P. No.120 of 2021 [Ex-P.11 in H.M.O.P. No.702 of 2021] to contend that the petitioner alone refused to co-operate for a reunion. The said observation made by the

Honourable Judge is an *obiter dicta* and not a *ratio decidendi* and hence, not binding on this Court.

19. The respondent sought to restitute her conjugal rights about 3 ½ years after filing of the divorce petition. The respondent contends that she was hopeful of a reunion until then and that due to some family dynamics within her family, there arose some difficulty for her to stay at her parents' place. The respondent may be willing to resume her marital life with the petitioner, but in view of the mental cruelty caused by her as detailed above, the petitioner's unwillingness for reunion is a justifiable one. His apprehensions about continuing the marital life with the respondent, even after the defamatory and derogatory allegations of sexual nature against him and his father, cannot be brushed aside simply. It has been eight years since the couples began living estrange and there has been no significant improvement so far. The matter was referred to Mediation in 2024 by this Court upon considering the facts and circumstances of this case. Unfortunately, the parties did not reach a consensus.

20. As elaborated above, the unestablished sexual allegations made by the respondent against the petitioner and his father, amounts to cruelty and thus, the petitioner has made out a case under Section 13 (1) (i-a) of H.M. Act. Points for consideration arising in these Civil Miscellaneous Appeals are answered accordingly. The petitioner is thus entitled to a Decree of divorce.

21. It is learnt that the petitioner is paying a maintenance of Rs.25,000/- to the respondent and his 8 year old child (who is under the custody of the respondent) every month. Considering the facts and circumstances of this case, especially the stand taken by the respondent that she is ready and willing to let go of the past and resume her marital life with the petitioner, this Court is of the view that though divorce is granted in favour of the petitioner, maintenance rights of the respondent shall remain unaffected.

CONCLUSION

22. In view of the foregoing narrative, these Civil Miscellaneous Appeals are allowed and the Orders passed by the Family Court are set aside. The petition filed by the appellant / husband seeking

to dissolve his marriage with the respondent is allowed, the petition filed by the respondent / wife seeking restitution of conjugal rights is dismissed, and their marriage is dissolved by a Decree of divorce. It is made clear that although these appeals are allowed and divorce is granted in favour of the appellant / husband, the respondent / wife as well as the minor child is entitled to claim maintenance / enhanced maintenance subject to the Hindu Adoption and Maintenance Act, 1956 or any other laws in force, from the appellant. 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. Consequently, connected Civil Miscellaneous Petition is closed.

[J.N.B., J.] **[R.S.V., J.]**

4 / 06 / 2025

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK

To

The III Additional Principal Family Court
Chennai.

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

TK

PRE-DELIVERY COMMON JUDGMENT MADE IN

CMA NOS.1038 AND 1039 OF 2024

04 / 06 / 2025