

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:24.11.2023 : Pronounced on:29.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI

CMA(MD) Nos.612 and 613 of 2022
and
CMP(MD) Nos.5267 and 5269 of 2022

~~S. Veeramanik~~

... Appellant in both cases

Vs.

~~A. Subhara~~

... Respondent in both cases

COMMON PRAYER: Civil Miscellaneous Appeals are filed under Section 19 of the Family Courts Act, 1984, against the Judgment and decree dated 25.06.2019 made in H.M.O.P.Nos.22 of 2014 and 316 of 2015 on the file of the learned First Additional District Judge, (P.C.R) in charge of the Family Court, Tiruchirapalli.

For Appellant : Mr.P.Athimoolapandian in both cases

For Respondent : Mr.M.Michael Bharathi in both cases

J U D G M E N T

(Judgment of the Court was made by RMT.TEEKAA RAMAN, J.)

Both the appeals are arising out of order passed in H.M.O.P.No.22 of 2014 and H.M.O.P.No. 316 of 2015 from the Family Court, Trichy. Parties in both cases are same and one H.M.O.P.No.22 of 2014 being filed by the wife for divorce; H.M.O.P.No.316 of 2015 filed by the husband for restitution of conjugal rights.

Though separate orders have been passed, by consent of both the parties, common argument is heard and common judgment is delivered.

2. For the sake of convenience, the parties are referred to as husband and wife.

3. Facts of the case:-

The wife has preferred H.M.O.P.No.444 of 2009 before the Principal Sub-Court, Trichirapalli and the same was transferred to the Family Court, Trichirappalli and re-numbered as H.M.O.P.No.22 of 2014. Pending trial, the husband filed H.M.O.P.No.316 of 2015 before the Family Court, Trichirappalli for restitution of conjugal rights. Since the restitution of conjugal rights by the husband has been filed at the fag end of the trial of divorce petition by wife, Family Court, has passed separate orders on the same day, wherein, the Family Court Judge, Trichirappalli has allowed the petition filed by the wife seeking divorce by granting decree of divorce and dismissed the petition filed by the husband seeking restitution of conjugal rights.

4. Admitted facts are under:-

(a) The marriage between the parties are solemnized on 10.11.2006 at Cuddalore and on the date of marriage the wife was working as Judicial Officer at Madurai and the husband was doing business at Cuddalore and a female child was born on 14.08.2007 and named as Monisha.

(b) The main averments in H.M.O.P.No.22 of 2014 filed by the wife seeking

the relief of divorce are that there was a misrepresentation of educational qualification of the husband and they also demanded dowry. However, the specific plea of living separately for more than 7 years amounting to irretrievable breakdown of marriage has also been taken.

5. Per contra, in the counter statement filed by the husband, he contended that he was subjected to cruelty and humiliation at the instance of the mother and sister of the wife. In the restitution petition, he has specifically averred that the false complaint has been instituted at the instigation of the wife, who is a Judicial Officer and further allegation that she has misused her power attached to the post.

6. During trial in H.M.O.P.No.22 of 2014 wife was examined as P.W.1 and marked Ex.P1 to Ex.P19 and the husband was examined as R.W.1 and marked Ex.R1-Marriage Invitation. In H.M.O.P.No.316 of 2015 by husband since substantial portion of the trial was completed in the divorce petition by wife and separate evidence have been in let and the husband was examined as P.W.1 and Exs.P1 to Ex.P3 were marked and wife was examined as R.W.1 and Ex.R1 to Ex.R21 were marked.

7 (a). In the interregnum period, there is a specific allegation that the husband wanting to see the child, he made visitation to the quarters of the wife at Trichy, the

mother and sister of the wife have assaulted the husband.

(b) Thereafter, the wife filed G.W.O.P.No.40 of 2010 for appointing her as guardian for the child. The husband filed I.A.No.697 of 2012 in G.W.O.P.No.40 of 2010, which was allowed, whereby, visitation rights was given to the husband for visiting the child at the residence of the wife on 10.11.2012 and 11.11.2012.

(c) When the husband went to see the child on that day, the house of the wife was found to be locked and explanation was offered from the wife, she stated that they went to Madurai for her sister's marriage and in this regard, husband has made a complaint before the High Court that the wife being the Judicial Officer has not complied with the said judicial order and copy of the same was marked as Ex.P9 and hence, the wife has given an explanation in this regard and the same was marked as Ex.P10. The husband has filed an application regarding contempt of court and the notice being issued, the wife has withdrew the G.W.O.P application and hence, contempt proceedings could not be proceeded.

(d) The husband and his brother have filed a complaint against the wife before the learned Chief Judicial Magistrate, Srivilliputhur and the same was marked as Ex.P11 and Ex.P12 and the Office Memorandum issued by the High Court in this regard was marked as Ex.P13 and the explanation given by the wife as Judicial Officer was marked as Ex.P14.

(e). Before the Family Court, the specific case was projected by the wife that while they are residing at Madurai the husband had forcibly entered into the house

and attacked her, mother and her sister and they have suffered grievous injuries and the wound certificates were marked as Ex.P6 and Ex.P7 and the complaint given before the K.K.Nagar Police Station, Madurai were marked as Ex.P4, Ex.P5 and Ex.P8.

8. On consideration of both oral and documentary evidence, the learned Family Court Judge has held that the complaint given the husband against the wife Ex.P9 and Ex.P11 and Ex.P13 amounts to cruelty and as the parties are living separately for more than 7 years, it amounts to irretrievable breakdown of marriage and granted divorce and also the fact that since the husband has not taken care of the wife, he is not entitled for the restitution of conjugal rights. Accordingly, allowed the divorce petition filed by the wife and dismissed the restitution of conjugal rights petition filed by the husband and hence, the husband has filed the present appeals.

9. The learned counsel for the appellant - husband also drew our attention to the judgments of this Court and submitted that giving a complaint would not constitute cruelty and irretrievable breakdown cannot be a ground for granting divorce.

10. Heard the learned counsel appearing for the respondent – wife in both cases.

11. The learned counsel appearing for the respondent - wife who is a Judicial Officer made submission in support of the judgment of the Family Court.

12. After hearing the rival submissions and perusing the documents filed before the Trial Court and also the various citations relied on by the respective parties, we are taken into consideration the oral and documentary evidence.

13. The respondent - wife filed H.M.O.P.No.444 of 2009 for dissolution of marriage on the ground of mental cruelty under Section 13(i)(a) of Hindu Marriage Act and irretrievable breakdown before the learned Principal Sub-Judge, Tirichirappalli.

14. The appellant – husband filed a counter statement. Thereafter, the case has been transferred to Family Court, Tirichirappalli and re-numbered as H.M.O.P.No.316 of 2015.

15. The case was initially filed for judicial separation and after amendment, the prayer was amended and pleadings were amended for the relief of dissolution of marriage.

16. In H.M.O.P.No.22 of 2014, the wife examined herself as P.W.1 and marked Exs.P1 to P19 and the husband examined himself as R.W.1 and marked Ex.R1.

17. Before the Family Court, at the first instance, it was filed on 08.09.2009 and counter and trial had commenced and subsequently, it was transferred to Family Court at Tiruchirappalli and re-numbered as H.M.O.P.No.22 of 2014 on 02.05.2014. After completion of this case, it is seen that the husband had filed H.M.O.P.No.316 of 2015 before the Family Court, Tiruchirappalli on 09.06.2015 namely 6 years after divorce application filed by the wife. Moreover, the Family Court procedure have been complied with once again and separate trial was taken and the husband was examined as P.W.1 and wife was examined as P.W.2. Ex.P1 to Ex.P3 were marked and Exs.R1 to R21 were marked, respectively by the husband and wife.

18. The date of marriage between the parties is 10.11.2006. Wife filed the H.M.O.P. On 08.09.2016; one baby girl named Monisha was born on 14.08.2007; i.e., separation is in the month of May 2016 and even before the birth of the child, parties have separated. The matrimonial life between the parties lasted only for 203 days.

19. The H.M.O.P.No.22 of 2014 is filed by the wife for dissolution of marriage on the ground of mental cruelty under Section 13(i)(a) of Hindu Marriage Act

alleging that:

(i) Her husband has suppressed the educational qualification namely false and fraudulent representation by the husband with regard to his educational qualification.

(ii) The wife was subjected to cruelty and harassment by the husband and her in-laws on allegation of bringing spurious and Gold Covering Jewels.

(iii) The mother of the wife and sister were assaulted by the husband and her brother on 20.09.2008, resulting in grievous injury to the mother of the wife.

(iv) The husband intimidated the wife and in-laws at the house of the wife on 18.07.2009 and again there was criminal intimidation by the husband and in-laws at the house of the wife on 12.08.2009.

(v) Intimidation by husband and in-laws at house of wife on 18.07.2009.

(vi) Kidnapping of the child Monisha on 30.04.2010 from the lawful custody of the wife, by the husband and his brother (nephew) Ranjith.

(vii) False complaint was given by the husband to the Registrar (General) Madras High Court on 27.05.2010 and false complaint was given to the learned Chief Judicial Magistrate, Srivilliputhur on 27.05.2010 while the wife was working as a Judicial Officer at Srivilliputhur.

(viii) False complaint was lodged on 27.05.2010 by the younger brother of the husband to My Lord The Hon'ble The Chief Justice of the Madras High Court.

(ix) Created a ugly scene and abused the wife at Sattur Town Police Station on 10.11.2012 under the pretext of visitation of child and judicially she has subjected to

torture by the husband by filing Guardian O.P.No.26 of 2012.

(x) 15 years long separation for severance of the matrimonial time on the ground of mental cruelty.

20. The husband filed a counter, the sum and substance of the counter is that there is no suppression of educational qualification of the husband as he has not passed out his school and after 6 months of marriage, the trouble started only after the mother of the wife started living at Madurai in Judicial Officer quarters along with the other daughter and the mother of the wife wanted her second younger sister of the wife to be given in marriage to the younger brother of the husband which was not accepted has resulted in acrimony between the family and the wife had shifted to Trichy without informing the husband and the wife misusing her position as a Judicial Officer and to create a sympathy started giving false complaint with Police Authorities and hence the husband was subjected to harassment in the hands of the wife and as a father, he was not allowed to have visitation rights pursuant to the order passed by the learned III Additional District Judge, Tiruchirapalli in I.A.No.697 of 2012 in G.W.O.P.No.40 of 2010.

21. We have considered the rival submissions and also note down the various allegations levelled by the wife against the husband for 'cruelty'.

22. Points for consideration:

(i) Whether the husband had committed cruelty or wife, as alleged?

(ii) The acts alleged against appellant - husband whether fall under category of mental cruelty as employed defined under Section 13(i)(1a) of Hindu Marriage Act.

(iii) Whether the orders passed by the Family Court are sustainable in law?

23. For the term “cruelty”, we have dealt with in C.M.A.No.499 and 1058 of 2018 dated 22.12.2023, we have relied upon the judgment of the Supreme Court in ***Samar Ghosh V.Jaya Ghosh reported in (2007) 4 SCC 511***, in Para Nos.13 & 14, wherein it is held as under :-

"101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the

spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be must more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty".

"14. In fact, the Hon'ble Supreme Court in Samar Ghosh's case, has discussed the instances of 'mental cruelty' and set out several illustrations of acts that would constitute 'mental cruelty'.

24. From the oral evidence of P.W.1 and R.W.1 coupled with documentary evidence, we find that at the time of the marriage between the parties, the wife was working as a Judicial Officer at Madurai and one common friend by name Ravi at Theppakulam of Madurai has introduced the family of the husband to the wife and with regard to the educational qualification, he had stated that the husband has completed M.A and he was studying M.B.A.

25. It is the specific case of the wife who filed H.M.O.P. for dissolution of marriage that there was a false and misrepresentation with regard to the educational qualification of the husband, since the husband has studied only upto 11th standard.

26. During cross-examination, R.W.1(husband) has admitted that he studied only upto 11th standard and he further admitted that the said Ravi acted as a middle man for the marriage.

27. A specific question has been confronted put to R.W.1 as to the educational qualification and R.W.1, husband admitted that he has studied only upto 11th standard and further would depose that the wife, who is a Judicial Officer has not seen the educational qualification of the husband, however has seen the sound economical position of the family and agreed for the marriage.

28. It is the specific case of the P.W.1 that Ravi has stated so, accordingly they have also inquired with the husband and in Ex.P1 - Marriage Invitation by their side, the husband education is shown as M.A (M.B.A).

29. Taking into consideration the fact that it is an oath against oath, however for the reasons best known, the said Ravi who had introduced the bride family at the time of the marriage proposal was not examined by the husband and RW1 gave an evasive reply for his non examination which assumes significance.

30. The husband has admitted that during the month of May 2007, both the parties are permanently separated and thereafter, she was transferred to Trichy, but however after receipt of the transfer order from the High Court, the wife went and joined as a Judicial Magistrate in Trichy, without informing the husband.

31. We are not in a position to appreciate the said contention since as a Judicial Officer she has to obey the orders of the High Court and to join at Trichy and hence we find that the plea raised by the husband with regard to the non intimation of the joining at Trichy is only invented for the purpose of this case.

32. Admittedly, as per Ex.P1 Marriage invitation printed by the bride side, the educational qualification of the bride groom is shown as M.A (M.B.A) and with

regard to the educational qualification, he had conveyed to Madurai Theppakulam Ravi, he had evaded the answer and he has also admitted that he cannot confirm the same in the witness box and hence, we find that due to the evasive answer given by the R.W.1 in the witness box, the allegation that there was a false misrepresentation by the husband with regard to educational qualification stands proved. The finding rendered by the Family Court is hereby confirmed and the same is based upon the admission of R.W.1 (husband) coupled with Ex.P1 Marriage Invitation Card.

33. Allegation No.II:-

The wife has alleged that the husband as well as her in-laws has levelled charges of bringing spurious and gold coverings; Both in the pleadings as well as in her evidence, the wife as P.W.1 has categorically deposed about the very same allegation. R.W.2, brother of the husband had admitted that the educational qualification of the husband is mentioned as M.A (MBA) and the same was extended to their family members. He has also stated that the sister-in-law (P.W.1) used to come to her native place (Cuddalore) with spurious Gold Covering Jewels.

34. However, in the cross examination it is stated that though P.W.1 (wife) came wearing gold jewels, none in the family questioned her. However the trial Court has rightly disbelieved the second portion of the evidence of R.W.2 on the ground that he had lodged a complaint to the Registrar (General) of the Madras High

Court under Ex.B12 which is discussed infra and hence, the said allegation also stands proved to the extent indicated above.

35. Allegation No.III:-

Both in the pleadings as well as in the evidence, P.W.1 wife has categorically stated that the husband had assaulted her mother and sister on 20.09.2008, which resulted in compound fracture in lumbar vertebra and grievous injury to the mother. In this regard, on perusal of Exs.P2, P3, P4 and P5, we find that a complaint has been lodged before the concerned Police Station for the grievous injury caused by the husband on the mother and sister of the P.W.1 and the complaint has been taken on file and F.I.R has also been registered.

36. Ex.P2 complaint was given by the mother of the wife against the husband. Ex.P3 is the report receipt given by the police. Wound Certificate of the mother and the sister were marked as Exs.P4 and P5 and in the said assault by the husband, the sister of the wife suffered nose bleeding injury and he was taken treatment in Trichy Hospital.

37. The next allegation of cruelty levelled by the wife against the husband is intimidation by the husband and in-laws at the house of the wife on 18.07.2009 and it is specifically pleaded in the petition as well as in P.W.1 evidence and in this connection, Ex.P8 was marked.

38. On perusal of Ex.P8 – complaint lodged by the wife against the husband in K.K.Nagar Police Station, Pudhur, the manner of the criminal intimidation given by the husband and her younger brother were clearly narrated and the police has received the complaint and inquired the matter. So also, another criminal intimidation has taken place at 12.08.2009 in the house of the wife as could be seen from Ex.P8.

39. Thus, on a combined reading of the oral evidence of P.W.1 coupled with documentary evidence, receipt issued by the police in Exs.P6 to P8 and in the absence of any plausible explanation, much less any explanation by the husband as R.W.1, we find that the wife was criminally intimidated by the husband on 18.07.2009 and 12.08.2009.

40. The parties are blessed with a minor girl by name Monisha. She was born on 14.08.2007. Even before the birth of the child, both the parties are separated. At the time of the marriage, the wife was working as a Judicial Officer in Madurai. Subsequently, she was transferred to Trichy. Thereafter, she was transferred to Srivilliputhur as a Judicial Magistrate. During the interregnum period, it appears that a complaint was lodged by the wife against the husband, alleging that the husband along with her younger brother had entered the judicial officer's quarters on 30.04.2010 and kidnapped the child under the guise of visitation rights.

41. In this connection R.W.2 brother of R.W.1 husband has categorically admitted that:

"ம.சா.ஆ.12 ஆவணம் மனுதாரருக்கு துன்பம் கொடுக்க வேண்டும் என்பதற்காக எனது சகோதரரின் தூண்டுதலின்பேரில் கொடுக்கப்பட்டது என்றால் அது சரியல்ல. நான் எனது அண்ணன் மற்றும் ரஞ்சித்குமார் ஆகியோர் குழந்தை மோனிசாவை வெளியில் கூட்டிச்சென்றோம் என்றால் திருச்சியில் கடைவீதிக்கு எனது அண்ணன் கூட்டிச்சென்றார். நானும் ரஞ்சித்குமாரும் உடன் சென்றோம். அன்றைய தேதியில் மனுதாரர் தனது குழந்தை மோனிசாவை கடத்திச்சென்றதாக எங்கள் மூவர் மீது திருச்சி கமிசனர் அலுவலகத்தில் புகார் கொடுத்தார் என்றால் அது சரிதான். கமிசனர் அலுவலகத்தில் மூவரும் விசாரணைக்குச்சென்றோம். எனது அண்ணனை விசாரித்தார்கள். எனது அண்ணன் குழந்தை மோனிசாவை கமிஷினரிடம் ஒப்படைத்தார். நாங்கள் மோனிசாவை கடைவீதிக்குகூட்டிச்சென்ற காலத்தில் மனுதாரர் எனது சகோதரரிடம் பிரிந்து வாழ்வதற்கு மனு தாக்கல்செய்து நீதிமன்றத்தில் நிலுவையில் இருந்ததா என்றுகேட்டால் எனக்கு அதுபற்றி தெரியவில்லை. போலீஸ் கமிசனர் அலுவலகத்தில் குழந்தையை மனுதாரரிடம் ஒப்படைத்துவிட்டு எனது அண்ணனிடம் பிரச்சினை செய்யக்கூடாது நீதிமன்றம் மூலம் பரிகாரம்தேடிகொள்ளுங்கள் என்று எழுதி வாங்கினார்கள் என்றால் அது சரிதான். அன்றைய தேதியில் நாங்கள் வீட்டிற்குச்சென்றோம். எனது அண்ணன் குழந்தைக்கு அப்பா என்ற முறையில் அமைதி கேட்காமல் குழந்தை மோனிசாவை தூக்கி சென்றார். சாட்சி அனுமதி கேட்க தேவையில்லை என்று சொல்கிறார்."

The admission of RW2 is sufficient enough to uphold the plea of the wife.

42(a). The next set of allegations by the wife against her husband is that the

husband is in the habit of making false complaint to the superior officers of the wife and in a particular incident namely on 27.05.2010, he had shoted a false complaint to the Registrar (General) High Court of Madras,

(b) Followed by another complaint to the Chief Judicial Magistrate, Srivilliputhur under whom the wife was worked as a Judicial Magistrate at Srivilliputhur,

(c) Followed by another complaint containing false averments and allegations on 29.10.2012 by the younger brother of husband to the Hon'ble The Chief Justice, Madras High Court.

(d) In this connection, she offered her explanation to the High Court on 02.03.2013 for the Official Memorandum issued by the Madurai Bench of Madras High Court on 10.11.2013. They are filed as Ex.P.13 and Ex.P14.

(e) Both in the pleadings as well as in her evidence, she has categorically stated that the averments made by the husband in the complaint to the Registrar (General) of Madras High Court, Chief Judicial Magistrate, Srivilliputhur and Hon'ble The Chief Justice of Madras High Court under Exs.P9, P10, P11 and P12 on 27.05.2010 and 29.10.2012, are all false and vexatious.

43. On perusal of Ex.P9 complaint given by the husband, he has made allegations which are put against him in the H.M.O.P.No.444 of 2009 which is filed and the complaint is on 27.05.2010 and hence we find that the contention raised by

the learned counsel for the respondent – wife that such a complaint is only to demoralize the wife who worked as a Judicial Officer and instead of answering the averments regarding cruelty committed by the husband before the Family Court, he has invented various things in the said complaint to the Hon'ble High Court and though he has averred that family matters that are *lis pendens* before the family Court even before the Ex.P9 and Ex.P10 complaint, he had stated that the golden scale of justice may be tilted against him and in his wife's favour, which we find to be without any basis, as it lacks credibility and any factual or legal basis.

44. After perusing the Ex.P9 and Ex.P10, we find that the said complaint in Ex.P9 nothing but a self - serving statement by the husband, in order to create humulation and disfigurement to the wife at her work place. Ex.P10 is the explanation given by the wife on 18.11.2010 submitted to the Registrar (Admin.) of the Madurai Bench of Madras High Court, wherein she has stated that in view of the fact that G.W.O.P.No.1 of 2009 filed before the learned Principal District Judge, Trichy, the husband has scale down such a low level to make all the allegations that are subject matter of the *inter se* disputes in the family Court and it is only to cause embarrassment for the wife at the work spot.

45. On perusal of Ex.P11- complaint given by the husband to the Chief Judicial Magistrate of Virudhunagar in Srivilliputhur, he had categorically stated that

Ravi of Theppakulam, Madurai had approached the bride for the marriage proposal. However, during the cross-examination of R.W.1, he evaded to answer with regard to the said Ravi who had introduced the family of the bride and who had stated that the educational qualification of the husband to be 'MBA'. Besides, it remains to be stated that even in the letter, he had stated that the spurious gold jewels are worn by the Judicial Officer during her visit to in-laws house. It is nothing but a calculated aim to undermine the self-respect of womanhood.

46. After perusing Ex.P11 - complaint to the Chief Judicial Magistrate at Srivilliputhur and the evidence of R.W.1 (husband), we find that the said Ex.P11 is a mere apprehension, infact we find it to be a virtuous attempt to undermine the image of the wife in the District Judicial where she was working.

47. Ex.P12 complaint given by the brother of the husband namely Neduncheizan to the Hon'ble The Chief Justice that his marriage was broken and the divorce as claimed by his wife was granted by the Court and for that he had blamed the sister-in-law, namely the Judicial Officer.

48(a). As per Ex.P13 the High Court has forwarded the official memorandum has asked for explanation and the wife has also given an explanation narrating the entire incidents and after perusing the explanation given, further proceedings were

closed

(b) We find that in Ex.P12, in the month of November 2012, her younger sister marriage was fixed. Just to harass her in the presence of her friends and relatives, somehow husband managed to get an order of the visiting rights on those marriage dates (i.e.,10.11.12, 11.11.12), knowingly that herself and her family members were not available in the judicial officer's quarters, he brought media people to the police station. The police after coming to know about the true fact that herself and her family members had gone to Madurai to the marriage of her sister, advised him, not to create these kind of ugly scenes by bringing media people in the personal matrimonial dispute. Wife came to know about the facts / incidents through her neighbour and the police over phone when P.W.1 was in the marriage hall. This single incident is alone sufficient to establish the intention, ill motive of her husband, Veeramani to harass wife ..

49. In this regard, it is pertinent to refer to Ex.P15 namely the report filed by the Inspector before the learned Additional Sessions Judge Mahila Court with regard to the order passed in G.W.O.P.40 of 2010 in I.A.No.697 of 2012. The Inspector of Police has gave a detailed report regarding the alleged incident said to have taken place on 10.11.2012 and 11.11.2012 which will throw the more light on the allegation made by the husband against the wife.

50. In the said report,

வாதி காவல் நிலையத்தில் காலை 09.00 மணிக்கு ஆஜரானார். அப்போது பிரதிவாதி தனது தங்கையின் திருமணத்திற்கு (11.11.12) செல்ல வேண்டி இருப்பதாகவும், அதுசமயம் தனது குழந்தையை நீதிமன்ற உத்தரவில் குறிப்பிட்டுள்ள தேதியில் ஆஜர்படுத்த முடியாத நிலையில் இருப்பதாகவும் தந்தி மூலம் தகவல் கொடுத்துள்ள விபரத்தை வாதியிடம் தெரிவிக்கப்பட்டது. வாதியின் வேண்டுகோளின்படி, பிரதிவாதியின் இல்லத்திற்கு மேற்படி விருதுநகர் மாவட்டசமீப நல அலுவலருடன், பெண்காவலரையும் அனுப்பிய போது, பிரதிவாதியின் அரசு குடியிருப்பு இல்லம் பூட்டப்பட்டு உள்ளதாக தெரிவித்தார். இதன் விபரத்தை மனுதாரரிடம் தெரிவித்தும், மீண்டும் மனுதாரரின் வேண்டுகோளின்படி எதிர்மனுதாரரின் இல்லத்திற்கு மனுதாரரை உடன் அழைத்து சென்று பார்த்தபோது குடியிருப்பு இல்லம் பூட்டு போடப்பட்டு இருந்ததை வாதியும் தெரிந்து கொண்டார். அதன் பிறகும் விபரங்களை எடுத்துச் சொல்லியும் வாதி புரிந்து கொள்ளாமல், எது எப்படி இருந்தாலும் நீதிமன்றத்தின் ஆணையை நிறைவேற்றியே ஆக வேண்டும் என்று வற்புறுத்தினார். மேலும், காவல்துறை உயர் அதிகாரிகளிடம் புகார் செய்வேன் என்று மிரட்டி சொல்லிவிட்டு காவல் துணைக்கண்காணிப்பாளர் அவர்களிடம் சென்று முறையிட்டார். காவல் துணைக்கண்காணிப்பாளர் அவர்கள் இதுகுறித்து என்னிடம் விபரங்களைக் கேட்ட போது பிரதிவாதியின் உடன்பிறந்த சகோதரிக்கு 10.11.12 ம் தேதி திருமண நிச்சயதார்த்தமும், 11.11.12 ம் தேதி திருமணமும் நடைபெற உள்ளது என்றும், திருமணத்திற்கு முக்கிய நபர்களுக்கு திருமண அழைப்பிதழ் கொடுக்கப்பட்டுள்ளது என்றும், மேற்படி இந்த விபரத்தை பிரதிவாதி எனக்கு தெரிவித்திருக்கிறார் என்பதையும் கூறினேன். அதன்பிறகு காவல்துறை துணைக்கண்காணிப்பாளர் அவர்கள் இந்த விபரத்தை வாதியிடம் சொல்லியும் கேட்காமல், மேற்படி வாதி திரு.வீரமணி மீண்டும், தனது சகாக்களுடன் சில பத்திரிக்கை நிருபர்களை காவல் நிலையம் அழைத்து வந்து பிரதிவாதியை அவமானப்படுத்த வேண்டும் என்ற நோக்கோடு பேட்டியும் அளித்தார். நிருபர்கள் வாதி சொல்லியதில் உண்மையில்லை யென்று சொல்லி விட்டு போய் விட்டார்கள். அதன் பிறகும் வாதி அங்கிருந்து சொல்லாமல், காவல் நிலையத்தில் நின்று கொண்டு, பிரதிவாதியை கேவலமாக திட்டியவரை காவல்துறையினர் எச்சரித்து நீதிமன்ற உத்தரவுப்படி நடந்து கொள்ள அறிவுரை கொடுத்து அனுப்பப்பட்டது.

51(a). This report is filed on 12.01.2012 before the Additional Sessions Court

at Trichy in connection with the visitation rights granted by the Court in the said application. This will throw more light on the counter allegation levelled by the husband against the wife and from the said report, the evidence record reveals multiple things and when P.W.1 (husband) was confronted with the said report, during the cross-examination, he has admitted the same in the cross – examination after seeing the report.

(b) Hence, we have no hesitation to hold that the husband, knowing fully that the marriage the younger sister of the wife was fixed on the said date and armed with an ex-parte order from the Mahila Court, Trichy went and created a scene before the house of the wife in the judicial officer's quarters and despite telegram which was received by the Inspector of Police that the wife and children were attending the marriage of the younger sister of the wife, he wanted to break open the house and the entire incident has been duly reflected in the report of the Sattur Inspector in Ex-P15 and hence, we hold that the husband knowing fully about the marriage to be solemnized on 11.11.2012, for the younger sister of the wife, has indulged in acts to defame the wife, who is working as a Judicial Officer and wanted to bring the wife to the Police Station and create humiliation and harassment to the (judicial officer) wife.

52. Thus, based upon the above discussion in the preceding paragraphs and also the evidence of P.W.1, coupled with the documentary evidence of Exs.P2 to P5,

we find that the respondent-wife has successfully demonstrated that the criminal assault committed by the husband on the mother and sister of the wife on 20.09.2018 which resulted in grievous injuries to her mother and the simple injury to the younger sister and the criminal intimidation suffered by the wife at the hands of the husband on 18.07.2009 as could be seen from Ex.P6 and Ex.P7 and in view of the admission of R.W.2 with regard to taking away the child on 30.04.2010, without permission, from the lawful custody of the wife and making a false complaint to the Registrar of the Madras High Court and the Chief Judicial Magistrate, Srivilliputhur, we find that the argument advanced by the appellant - husband that the respondent-wife took advantage of the avocation as a Judicial Officer is devoid of merits and found to have no truth and it is nothing but to generate a false allegation against his wife.

53. The case of the husband is a peculiar one and he has caused cruelty both mentally and physically to the wife as well as to her family members and the kidnapping of the child not at all to compromise at any costs, the same was suggestive of unlawful and high handed activities of the appellant husband warranting the wife to protect herself and the child.

54. Thus, this Court finds that the various allegations of cruelty has enumerated in para No. 20 have been duly demonstrated and proved, both by oral and documentary evidence and as well as by way of admission from R.W.1

(husband) and R.W.2 (brother of the husband) and the evidence of P.W.1 that the husband got enraged and furious when the wife questioned his education and on observing is uncultured and idiotic acts within few months of marriage and was the root cause for the demoralization of the institution of the marriage and hence, even before the birth of the first child, the parties have separated and none of the allegations made under Exs.P9, P11 and P12 by the husband against the wife warrant any consideration and those complaints are intended to cause humiliation and harassment to the (Judicial Officer) wife in the working spot and appears to have been made only with a view to cause discomfort to the wife.

55. The wife was examined in the first H.M.O.P. as P.W.1 on 24.02.2014 in the divorce case and she was cross examined on 17.11.2014 and thereafter, the petitioner side evidence was closed and the husband was examined in-chief on 10.08.2015. At that time, when the matter was posted for cross-examination of D.W.1, he came with an application for restitution of conjugal rights in H.M.O.P.No.316 of 2015 and hence, the trial Court has rightly observed that the husband wanted to harass the wife by filing restitution of conjugal rights petition after a period of 6 long years, especially when the divorce petition filed by the wife is about to complete the trial.

56. On perusal of Exs.P9, P11 &P12 and the averments made by the husband

against the wife, no doubt it amounts to harassment and mental cruelty to the wife in view of the nature of the allegations made therein.

57. A false complaint, criminal proceedings, indecent defamatory statements made by the husband, which, in a cumulative effect amounts to 'mental cruelty' warranting divorce and he has also made unfounded indecent and defamatory allegations against the spouse and his relatives in the pleadings and also filed repeated false complaints before the Administrative Side of the High Court, as if the wife is acting in a manner unbecoming of a judicial officer, which has an adverse impact upon the prospects of the wife and hence, this Court has no hesitation to hold that the wife has proved her pleadings, both by oral and documentary evidence and such cruelty are illustrative case of the mental cruelty which could warrant grant of divorce. The Family Court has rightly ordered dissolution of marriage.

58. In the case of K.Srivasa Rao Vs.D.A.Deepa, (2013) 2 SCC (Cri) 963, it has been held as follows:

"Making unfounded indecent / defamatory allegations against spouse or her relatives in pleadings, filing repeated false complaints or cases in court, issuing notices or news items which may have adverse impact on business prospects or job of spouse, etc., held, are all illustrative cases of mental cruelty which would warrant grant of divorce".

59. In the case of Joydeep Majumdar Vs. Bharti Jaiswal Majumdar, 2021 SCC Online SC 146, similar defamatory complaints were lodged with the husband's superiors in the Army, leading to a Court of Inquiry and negatively impacting his career advancement. The Court noted that when such allegations come from an educated spouse, they have the potential to irreparably harm the appellant's character and reputation among colleagues, superiors, and society at large. The husband's explanation that the complaints were made to preserve the marital relationship cannot justify her persistent efforts to undermine her husband's dignity. In such circumstances, it's reasonable to expect the wronged party to continue the marriage, and there is sufficient justification for separation.

60. The Supreme Court in the case of Ravi Kumar Vs. Julmidevi (2010) 4 SCC 476 has held that "reckless, false and defamatory allegations against the husband and family members would have an effect of lowering their reputation in the eyes of the society and it amounts to cruelty".

61. Whether the complaints were false or true, irrespective of this fact, making derogatory complaints to the Employer of the spouse, with intent to harm professional reputation and financial well-being, is nothing but cruelty. Making such complaints demonstrate lack of mutual respect and goodwill, which is crucial for a healthy marriage and merely by stating that such complaints were made after the parties have separated, in no manner absolves a spouse from the guilt of committing cruelty on the receiving end

62. Spouse engaging in defamatory language directed towards one's in-laws, not only undermines the dignity and reputation of the individuals but also erodes the trust and respect necessary for a healthy marital bond. The husband admission to sending a message containing derogatory language towards the wife demonstrates a lack of respect and consideration to the relationship. These actions undermine the foundations of mutual respect and support, essential for a healthy marital bond.

63. After perusing the documentary evidence referred above, we have no hesitation in our mind to hold that the appellant-husband is a wrong doer and committed cruelty to wife and is not in a position to give matrimonial bliss by means of co-habitation with the wife.

64. Certain allegations have been made by the husband that the matrimonial tie between the parties went into rough weather after the husband has rejected the proposal made by mother in law regarding the younger daughter to get married to the younger brother of the appellant-husband.

65. In this regard, the evidence of P.W.1, both in the chief and cross examination will be an answer to the allegation. Once a mother who sees the elder daughter being ruined by the son in law, no prudent mother will go for marriage proposal of another daughter for the younger brother of the son in law. Furthermore,

she is a Law Graduate and whereas, R.W.2 younger brother of the appellant-husband has studied only Polytechnic and hence, we find that such allegations are made for the purpose of this case. Hence, on a cumulative analysis of the above factual matrix that has been elicited from the evidence, the trial Court has rightly come to the conclusion that the appellant has treated the wife with cruelty and the wife has committed no mistake, except for the fact that she is working as a Judicial Officer and the husband wanted to cover up all his misdeeds by alleging falsely that the wife as a Judicial Officer assumed upper hand and misused her power and hence, we find no merits in these appeals.

66. In the result,

Both the Civil Miscellaneous Appeals are dismissed and the order of decree granted in H.M.O.P.No.22 of 2014 is hereby confirmed and the order of dismissal of restitution of conjugal rights made in H.M.O.P.No.316 of 2015 is also hereby confirmed. No costs. Consequently, connected C.M.Ps are closed.

67(a). Before we part, we find that there is no limitation for filing a petition for restitution of conjugal rights or a divorce application by either of the spouse and we have noticed that when a proceeding has been initiated by either of the spouse before the Family Court, the other spouse will resort to the counter relief, namely when the case is filed for dissolution of marriage, the other spouse will file a petition for restitution of conjugal rights and vice versa.

(b) However, we have noticed that for the last few years, it has become the habit / trend before the family court that the first case instituted by the one of spouse is for restitution or for divorce,

(c) The parties will go for completion of the pre-trial proceedings as contemplated in the Family Court Act and after examination of the petitioner's side is over, instead of getting into the box and complete the trial, the opposing spouse, files a petition at that stage as a new application, even at that stage of the cross examination of R.W.1. The Family Courts are bound by the procedures laid down in the Act and once again, the second case filed by the opposite party has to go through the pre trial proceedings in view of the provisions contained in the Family Court Act and further delay the determination of the matrimonial proceedings before the Family Courts.

(d) Hence, we find that certain period of limitation has to be fixed to curb this evil designed practice before the Family Courts which is consuming large hours of the family court and also causing innumerable years of delay in disposal of the Original Petition and hence, we find that the High Court Rules Committee (Civil) shall look into the matter and prescribe a limitation period that, in the event of any application being filed by one of the spouses to the marriage and that summons have been served on the opposite party, shall commence the point of limitation for filing the counter relief namely for the divorce petition / or / counter relief of restitution of conjugal rights and vice versa, to suggest, viz a period of 9 months to 1 year may be

fixed, since it has become almost a regular practice before the Family Courts in mofusil areas to file another case between the very same parties seeking the counter relief only at the fag end of the trial of the first proceeding.

(e) Hence, the Registry is directed to place this order copy and our recommendations for consideration by the High Court on the Administrative Side for the amendment of the Rules as contemplated under Section 123 of the C.P.C which empowers the High Court Rule Committee to make rules with regard to limitation governing the field under the Family Court Act.

(f)Hence, the Registry is directed to place the copy of this order for consideration of the My Lord the Hon'ble Chief Justice for referring the matter to Rule Committee (Civil) for consideration so that all the stake holders involved are heard before the Committee and a decision could be taken by the Rule Committee on the above aspects.

(T.K.R.,J.)

(P.B.B.,J.)

29.04.2024

NCC : Yes/No

Index : Yes/No

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To

1.The First Additional District Judge,
(P.C.R) in charge of the Family Court,
Tiruchirapalli.

2.The Section Officer,
V.R.Section, High Court, Madras.

RMT.TEEKAA RAMAN, J.
AND
P.B.BALAJI, J.

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Pre-Delivery Judgment in
CMA(MD) Nos.612 and 613 of 2022 and
CMP(MD) Nos.5267 and 5269 of 2022

29.04.2024