

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2011

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THE HONOURABLE MR. JUSTICE A. SELVAM

C.M.A(MD)No.535 of 2011 and

MP(MD)No.2 of 2011

Arputha Sujatha

.. Appellant/Respondent

Vs.

P.Antony Ravichandran @ Chandran

.. Respondent/Petitioner

Prayer : Civil Miscellaneous Appeal filed under section 55 of Indian Divorce Act against the order dated 31.03.2004 passed in IDOP No.19 of 2003 by the First Additional District Court, Tirunelveli.

For Appellant : Mr.A.Abdul Khader  
M/s.Eddy & Emboss  
For Respondent : Mr.S.Natarajan

JUDGMENT

This Civil Miscellaneous Appeal has been directed against the order dated 31.03.2004 passed in IDOP No.19 of 2003 by the First Additional District Court, Tirunelveli.

2. The respondent herein as petitioner has filed IDOP No.19 of 2003 under section 10(1)(X) of the Divorce Act, 1869 praying to dissolve the marriage performed in between him and the respondent therein.

3. It is stated in the petition that the petitioner has married the respondent on 13.11.1992. The petitioner has studied upto 5<sup>th</sup> standard, whereas the respondent is a collegiate girl at the time of marriage. After marriage both the petitioner and respondent have lived along with family members of the petitioner. On 30.08.1993 the respondent has given birth to a child by name Siju. After delivery the respondent has wilfully refused to come to matrimonial abode. The respondent is very much adamant and always keeping to grab money from the petitioner. The respondent has used to tease the petitioner by way of quoting his illiteracy. The petitioner has gone to abroad and once in two years he used to visit India. The respondent has intentionally deserted the petitioner. On 03.07.1998 she has given birth to second child by name Ajaykumar. Since the petitioner has refused to transfer his property in the name of the respondent, the attitude of the petitioner has become worse. During March 2001 the respondent has deserted the petitioner and gone to her parents house. During February 2002, the respondent has given a police complaint in Panagudi Police Station. The petitioner has attended enquiry. Subsequently she has given another police complaint in All women Police Station, Palayankottai. She has also induced some rowdy elements so as to threaten the petitioner. Since the respondent has caused cruelty to the petitioner, the present petition has been filed for the relief sought for therein.

4. In the counter filed on the side of the respondent, the factum of marriage, delivery of children etc., have been admitted. However, the

Respondent has denied all the allegations made against her. Further it is stated in the counter that only due to bona fide reasons, the respondent has given police complaints against the petitioner. The petitioner has tried to perform second marriage. Under the said circumstances, he wilfully deserted the respondent and ultimately prayed to dismiss the petition.

5. On the basis of the divergent evidence available on record, the Court below has come to the conclusion that the respondent has caused cruelty and therefore, the marriage in question is liable to be dissolved and ultimately allowed the petition. Against the order passed by the Court below, the present Civil Miscellaneous Appeal has been preferred at the instance of the respondent as appellant.

6. Before contemplating the rival submissions made on either side, it would be more useful to look into the following admitted facts on the basis of the petition and counter. The petitioner has married the respondent on 13.11.1992 and both of them have lived as husband and wife in the house of the petitioner along with family members. On 30.08.1993 the respondent has given birth to a child by name Siju and on 03.07.1996 she has given birth to another child by name Ajaykumar and from the year 2001 the petitioner and respondent are living separately.

7. The main averments made in the petition are that after the birth of second child a considerable change has happened in the attitude of the respondent and she used to tease the petitioner on the basis of disparity in educational qualification and she pressurised the petitioner to transfer his property in her name and since her demand has not been ceded by the petitioner, the respondent has used to cause cruelty to him and even she has gone to the extent of lodging police complaints on frivolous allegations and further she has induced some rowdy elements to threaten the petitioner. Under the said circumstances she caused mental cruelty to the petitioner.

8. On the side of the respondent all the allegations levelled against her are denied. Since all the allegations made against her are denied, it is for the petitioner to prove to the effect that the respondent has caused cruelty to him.

9. On the side of the petitioner, the petitioner has been examined as PW1 and his mother has been examined as PW2. Both of them have deposed about the cruelty alleged to have been caused by the respondent to the petitioner. Further PW1 has specifically stated that the respondent has lodged police complaints twice purely on false and frivolous allegations and the same have been enquired into and ultimately found that the respondent has made frivolous and reckless allegations against him.

10. The Court below by way of believing the evidence given by PWs.1 and 2 has come to the definite conclusion to the effect that the respondent has caused cruelty. Under the said circumstances, the marriage in question is liable to be dissolved on the basis of cruelty.

11. At this juncture, the Court has to look into the evidence given by the respondent. The respondent has been examined as RW1. She has stated in her evidence that all the allegations levelled against her are

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e and since the petitioner has received her jewels and also ~~received~~  
look after her and children, a complaint has been lodged in All Women  
Police Station and the same has been required and she is always willing  
to live with the petitioner.

12. From the conjoint reading of the depositions given by the petitioner (PW1) and respondent (RW1), the Court can easily discern that there is a rift between them. The specific averments made in the petition are that after the birth of second child on 03.07.1998 a considerable change has happened in the attitude of the respondent and she pressurised the petitioner to transfer his property in her name and since her demand has been turned down she used to cause cruelty to the petitioner and during March 2001, she abruptly left matrimonial abode and subsequently police complaint has been made.

13. From the evidence of the respondent, it is made clear that the respondent has given a police complaint on 26.02.2002, wherein she has made certain allegations against the petitioner. Prior to 26.02.2002 she has given another police complaint against the petitioner. Since the respondent has gone to the extent of giving police complaints against the petitioner by way of setting forth frivolous and reckless allegations, it is needless to say that there is no concordial relationship between the petitioner and respondent. If really there is no fault on the part of the respondent, definitely she would not have remained silent from the year 2001 without taking any legal steps so as to live with the petitioner.

14. The present petition has been filed in the year 2003. Even after filing the present petition, the respondent has not taken any legal steps so as to live with the petitioner. Therefore, it is quite clear that from the inception of marriage a despair has been in existence between the petitioner and respondent with regard to disparity of educational qualifications amongst them and also with regard to transfer of property of the petitioner in the name of the respondent. Further from the evidence of PWs.1 and 2 the Court can very well come to a conclusion that the respondent has caused cruelty to the petitioner even by way of lodging police complaints against him. The Court below after considering the available evidence on record has rightly come to the conclusion that the respondent has caused cruelty to the petitioner.

15. At this juncture, it would be more useful to look into the decision reported in 2006 (2) CTC SC 510 (Naveen Kohli Vs. Neelu Kohli), wherein the Honourable Apex Court has observed that "cruelty" has to be understood in ordinary sense of term in matrimonial affairs. Cruelty could be established by proving conduct or brutal act complained of if intention to harm, harass or hurt other party could be inferred from misconduct complained of. Cruel treatment may also result from cultural conflict between parties. Mental cruelty can be caused by alleging that other party is mentally ill."

16. In the instant case it has already been pointed out that the respondent is in the habit of lodging police complaints purely on frivolous and reckless allegations. If really such allegations are true, definitely the police would have taken proper action against the petitioner. But absolutely there is no evidence on the side of the respondent to the effect that the concerned police have taken proper

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tion against the petitioner and that itself would go to show that the respondent has caused mental cruelty to the petitioner. Since the present petition has been filed stating that the respondent has caused cruelty to the petitioner, in view of the dictum given by the Honourable Apex Court, this Court is of the view that the present petition is a fit case for granting divorce on the basis of alleged cruelty. Therefore, viewing from any angle the conclusion arrived at by the Court below is perfectly correct and the same does not require any interference.

17. The learned counsel appearing for the appellant/respondent has attacked the impugned order passed by the Court below on the following grounds:

(a) The first and foremost ground is that as per section 3 (2) of the Divorce Act, 1969, "District Judge" means, a Judge of a principal civil Court of original jurisdiction and therefore, this petition should be tried only by Principal District Judge, whereas, the impugned order is passed by the First Additional District Judge, Tirunelveli. Under the said circumstances the First Additional District Court is not having jurisdiction to try the present petition and therefore, the impugned order passed by the First Additional District Judge, Tirunelveli is totally illegal.

(b) The second ground is that except flimsy despair between the petitioner and respondent, no serious incident has taken place in their matrimonial life and on the basis of mere tear and wear, divorce cannot be granted and the Court below has failed to look into it.

18. In order to controvert the contention urged on the side of the appellant/respondent, the learned counsel appearing for the respondent / petitioner has contended that question of jurisdiction has not been raised at the time of trial or even at the time of passing impugned order and therefore, the same cannot be put forth in appellate stage. Under the said circumstances, the first ground raised on the side of the appellant/respondent falls to the ground. Further the present petition has been filed on the basis of alleged cruelty and both Pws.1 and 2 have given picturesque evidence about the cruelty alleged to have been caused by the respondent to the petitioner and the Court below after considering the overwhelming evidence adduced on the side of the respondent/petitioner has rightly passed the impugned order and therefore, the entire argument advanced on the side of the appellant/respondent is liable to be rejected.

19. In support of the first ground urged on the side of the appellant/respondent, the decision reported in 2008 (1) CTC 178 (The State of Tamil Nadu rep. by the Superintending Engineer, P.W.D./W.R.O. Periyar Vaigai Basin Circle, 45 North Chithirai Street, Madurai and another Vs. R.Sundaram, Contractor), has been accited wherein the Division Bench of this Court has held that "objection regarding lack of inherent jurisdiction goes to root of matter and could be taken up even at appellate stage."

20. In view of the decision rendered by the Division Bench of this Court, it is made clear that objection with regard to inherent jurisdiction can be raised at any stage.

21. The first and foremost attack made on the side of the appellant/respondent is that the Court below is not having inherent jurisdiction so as to enquire into the petition in question. As pointed out earlier, the learned counsel appearing for the appellant/respondent has put-forth his first contention on the basis of section 3(2) of the said Act, wherein it is mentioned like thus:

"District Judge means a Judge of a principal civil Court of original jurisdiction however designated."

22. At this juncture, it would be condign to look into section 10 (1) of the said Act and the same reads as follows:

"Any marriage solemnized, whether before or after the commencement of the Indian Divorce (Amendment) Act, 2001, may, on a petition presented to the District Court either by the husband or the wife, be dissolved on the ground that since the solemnization of the marriage, the respondent....."

23. A mere reading of the provision of the said section would go to show that a petition like this, can be filed before the concerned District Court. In section 10(1) of the said Act, the words "Principal District Court" are not found place. Under the said circumstances, the Court cannot come to a conclusion that the First Additional District Court is not having inherent jurisdiction to enquire into the petition in question.

24. In the decision rendered by the Division Bench of this Court, it has been specifically pointed out that the concerned proceeding should be filed only before the District Court and not before Subordinate Court, which is inferior to District Court. In the instant case, the First Additional District Court, Tirunelveli is not inferior to the Principal District Court, Tirunelveli. Both are having equal cadre. Except administration of District, the First Additional District Court cannot be construed as an inferior Court to the Principal District Court. Therefore, it is needless to say that the Court below is having inherent jurisdiction to enquire into the petition in question. Under the said circumstances, the first and foremost attack put forth on the side of the appellant/respondent is sans merit.

25. The second attack made on the side of the appellant/respondent is that except flimsy despair, nothing has happened between the petitioner and respondent and on the basis of tear and wear, divorce cannot be granted.

26. The second attack made on the side of the appellant/respondent is based upon the decision reported in (2010) 3 MLJ 561 (S.Valli Vs. N.Rajendran), wherein the Division Bench of this Court has held that "mere bickerings in matrimonial life cannot be a ground for cruelty".

27. The very same Division Bench of this Court has rendered another decision reported in (2010) 3 MLJ 91 (R.Sudha Vs. V.Santhil), wherein also it is observed that "mere trivial irritations, quarrels, normal wear and tear of married life would not amount to mental cruelty".

28. In the instant case, even at the risk of repetition, the Court would like to point out that the respondent has gone to the extent of lodging police complaints against the petitioner purely on the basis of frivolous and reckless allegations and that itself is nothing but a text-book example of causing cruelty to the petitioner. Therefore, the facts and circumstances of the present petition are entirely different from the facts and circumstances of the decisions referred to supra. Since the factual situations of the present petition are totally different from the factual aspects of the decision mentioned supra, the same cannot be attuned in the present case.

29. It has already been pointed out that the Court below after considering the available evidence on record has rightly come to the conclusion that the marriage between the petitioner and respondent is liable to be dissolved on the basis of cruelty. In view of the foregoing enunciation of factual aspects, this Court has not found any force in the contention urged on the side of the appellant/respondent and altogether the present Civil Miscellaneous Appeal deserves to be dismissed.

30. In fine, this Civil Miscellaneous Appeal is dismissed without cost and the order passed in IDOP No.19 of 2003 by the First Additional District Court, Tirunelveli is confirmed. Connected Miscellaneous Petition is also dismissed.

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Sd/-

Assistant Registrar (P&amp;A)

/True copy/

*C. Vasanthi* 13.9.11  
Sub Assistant Registrar

To

The First Additional District Judge, Tirunelveli.

+1CC TO M/S.EDDY & EMBOSS, ADVOCATE SR.26018  
+1CC TO MR.NATARAJAN, ADVOCATE SR.25993

Copy to

The Section Officer, VR Section,  
Madurai Bench of Madras High Court, Madurai.

mj

SR : 22.08.2011 : 6p/5c

Judgment in

C.M.A (MD) No. 538 of 2011  
03.08.2011