

Madras High Court

G.Priya @ Braisie vs D.Balamurugan @ Moses on 23 September, 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

C.M.A.No.607 of 2015

G.Priya @ Braisie

Versus

D.Balamurugan @ Moses

Prayer: Civil Miscellaneous Appeal has been filed under Section 55 of the Indian Divorce Act against the order of the Court of Principal District Judge-II at Kancheepuram, O.P.No.15 of 2013, dated 19.09.2014.

For Appellant : Mrs.R.Sumithra Chakkaravarthi

For Respondent : Mr.G.Balasubramanian
for M/s.Leela and

JUDGMENT

Heard Mrs.Sumithra Chakkaravarthi, learned counsel for the appellant/wife, and Mr.G.Balasubramanian, learned counsel for the respondent/husband, through Video Conferencing, due to COVID-19 pandemic.

2. This Civil Miscellaneous Appeal is directed against the impugned order passed by the learned Principal District Court-II, Kanchipuram, in I.D.O.P.No.15 of 2013, dated 19.09.2014, granting divorce on the ground of cruelty.

3. Short facts leading to the filing of this appeal are stated below:- <http://www.judis.nic.in> C.M.A.No.607 of 2015 The appellant is the wife and the respondent is the husband. The marriage was solemnized between the appellant and the respondent on 09.04.2010 at A.G.Church, ECR Road, Pudupattinam, Kancheepuram District, as per Christian Rites and Customs. Out of the conjugal relationship, they were blessed with a female child on 12.01.2011 at J.S.P. Hospital, Chengalpattu. Thereafter, she went to her parental home with child and the respondent/husband

also visited her every week. While so, on two occasions i.e. on 28.06.2011 and 15.07.2011, when he visited his wife, he was ill-treated, intimidated and deterred him not to visit again. His mother-in-law also prevented her daughter from talking to him. Even on the first birthday function of his child, he was not invited. Subsequently, the husband filed divorce case under Section 22 and 10(X) of the Indian Divorce Act in I.D.O.P.No.84 of 2012 before the learned Principal District Court, Chengalpattu, which was later-on transferred to the file of learned Principal District Court- II, Kanchipuram, and renumbered as I.D.O.P.No.15 of 2013. Learned trial Court, vide order dated 19.09.2014, granted the divorce as sought for by the husband. Aggrieved by the same, the wife/appellant herein has filed the present appeal.

4. Assailing the impugned order, Mrs.R.Sumithra Chakkaravarthy, learned counsel for the appellant/wife argued that the wife wants to live with her husband along with the child. When the respondent/husband lodged a complaint before the All Women Police Station, Mamallapuram, requesting for reunion on 16.01.2012, a panchayat was organized, wherein the respondent/husband undertook before the police that he would take a <http://www.judis.nic.in> C.M.A.No.607 of 2015 separate establishment for his wife and child within three months and therefore, based on the said undertaking, the said complaint was closed. Thereafter, he filed a divorce case on 08.03.2012 in I.D.O.P.No.15 of 2013 on the file of learned Principal District Court-II, Kanchipuram. Subsequently, the wife filed criminal complaint against her husband under Section 498-A of the I.P.C. on 03.05.2012. In the divorce petition, she has also filed a counter affidavit stating that she wanted to live with her husband unconditionally. Only thereafter, the husband filed the amended petition in I.D.O.P.No..15 of 2013 including the filing of a criminal complaint against him by her wife as a ground of mental cruelty. Immediately, the wife filed her additional counter affidavit dated 11.04.2014 stating that she is ready to cooperate with her husband to compound the charges in the above said criminal case by due process of law subject to the condition of reunion. However, the learned trial Court, by considering the filing of a criminal complaint on 03.05.2012 by the appellant/wife under Sections 498-A, 294(b), 323, 406, 506(i) of IPC read with Section 4 of Dowry Prohibition Act against all his family members viz., father, mother, three sisters and one sister's husband, after the divorce case filed by the husband on 08.03.2012, has wrongly granted divorce on the ground of cruelty, as the husband has been put to mental cruelty.

5. Adding further, learned counsel argued that at no point of time, the appellant/wife thought to cause any hardship or inconvenience to her husband. Although both the husband and wife are blood relatives, namely, the husband is the son of wife's <http://www.judis.nic.in> C.M.A.No.607 of 2015 paternal aunt, she was denied entry into the house by her mother-in-law and therefore, she was forced to lodge a criminal complaint under Sections 498-A, 294(b), 323, 406, 506(i) of IPC read with Section 4 of Dowry Prohibition Act only for the purpose of reunion. This was also clarified in her additional counter affidavit stating that she would close the criminal complaint once the reunion takes place. But, this stand of the wife was completely overlooked by the learned trial Court and while doing so, the learned trial Court has caused grave prejudice to the appellant/wife by dissolving the marriage.

6. Continuing her arguments, she submitted that under Section 10 (x) of the Divorce Act, the spouse has to treat the other spouse with such cruelty as to cause a reasonable apprehension in the mind of

the respondent/husband that it would be harmful or injuries for the husband to live with the wife, but, that was not proved by the husband in the present case. Whiles, learned trial Court failed to see any specific instances of mental cruelty, however, by seeing only petty instances of wear and tear in a family life, it has wrongly granted divorce. Moreover, when the appellant/wife has expressed her willingness to live with her husband to save her life and also for the sake of child unconditionally in her counter affidavit, granting of divorce on the ground that filing of a criminal complaint under Sections 498-A, 294(b), 323, 406, 506(i) of IPC read with Section 4 of Dowry Prohibition Act would cause mental cruelty to the respondent/husband, is without any basis. Besides, when the appellant/wife and child were deserted by the respondent/husband, she filed a petition under Section 125 of Cr.P.C. seeking for <http://www.judis.nic.in> C.M.A.No.607 of 2015 maintenance for herself and her minor daughter before the learned Family Court, Chennai, wherein the respondent/husband participated in the initial proceedings, but, subsequently, he remained absent and therefore, ex parte order was passed granting a sum of Rs.10,000/- towards the wife and Rs.10,000/- towards the minor child from the date of filing of the petition i.e. 23.03.2015, however, the husband has not paid even a single pie towards maintenance and till date, arrear amount of Rs.13,20,000/- is pending.

7. Again, assailing the impugned order, learned counsel for the appellant, arguing that mere filing of a criminal complaint under Sections 498-A, 294(b), 323, 406, 506(i) of IPC read with Section 4 of Dowry Prohibition Act by the wife would not amount to causing of mental cruelty, has placed reliance on a judgment of the Hon'ble Apex Court in the case of Mangayakarasi Vs. M.Yuvaraj [AIR 2020 SC 1198], whereby it is held that though a criminal complaint had been lodged by the wife and husband has been acquitted in the said proceedings, the basis on which the husband had approached the trial Court that filing of a criminal complaint against her husband and his family members caused a mental cruelty, cannot be a ground for divorce. Therefore, granting of divorce on the basis of a filing of a criminal complaint under Sections 498-A, 294(b), 323, 406, 506(i) of IPC read with Section 4 of Dowry Prohibition Act for the alleged demand of dowry cannot be the basis for grant of divorce for the reason that the said criminal complaint itself was dismissed, as allegations were not made out.

<http://www.judis.nic.in> C.M.A.No.607 of 2015

8. Again, referring to the judgment of the High Court of Chattisgarh in the case of Durga Bai and another Vs. Narayan Sinha (F.A.M.No.42 of 2015, dated 08.11.2017), she pleaded that a mere filing of a criminal complaint against the husband and family members is not cruelty. Therefore, divorce granted by the learned trial Court on the basis of a criminal complaint filed against the husband and his family members is liable to be set aside and the parties may be directed to live together forgetting their past life, she pleaded.

9. Mr.G.Balasubramanian, learned counsel for the respondent/husband, submitted that after the marriage, when the appellant/wife conceived, they were leading a happy life inspite of usual wear and tear of marital life. After the birth of the female child on 12.01.2011 at J.S.P. Hospital, Chengalpattu, the wife went to her parental home on 14.04.2011, hence, the respondent/husband and his family members visited the mother and child and thereafter, he used to visit both of them

every weekend. Whiles, on two occasions i.e. on 28.06.2011 and 15.07.2011, the wife's family members ill-treated and intimidated and deterred him not to visit again. Thereafter, the respondent/husband used to call her wife, however, his mother-in-law restrained her from talking to her husband and after some time, her phone was also switched off. During first birthday of child, the husband was not even invited by his wife and they themselves celebrated the first birthday of the child, that shows that the wife not only deserted him but also humiliated him. Moreover, the appellant's mother has allured her to marry her uncle for the second time <http://www.judis.nic.in> C.M.A.No.607 of 2015 when the first marriage was subsisting, for which, she did not even object, he pleaded.

10. Adding further, learned counsel argued that on 15.12.2011 at about 6 p.m., the appellant/wife, her parents, her father's brothers Mr.E.Rajendran and Mr.E.Elumalai and her other relatives came to his house and started unnecessary wordy quarrels using filthy language in the street and tarnished the reputation of the respondent/husband and his parents openly in the public, besides, Mr.E.Rajendran went to the extent of giving life threat every now and then through mobile. Therefore, when the efforts taken by the respondent/husband to bring his wife back to the matrimonial home failed to evoke any response, he filed a divorce case under Section 22 and 10(X) of the Indian Divorce Act for dissolution of marriage and also to handover the custody of the child. However, pending divorce petition, she filed a criminal complaint under Sections 498-A, 294(b), 323, 406, 506(i) of IPC read with Section 4 of Dowry Prohibition Act, against the respondent/husband, his father, mother and two unmarried sisters and also against another married sister and her husband. In the said complaint, she alleged that there were demands of additional dowry and since the said demands were not complied with, the respondent/husband and his family members harassed her and she further alleged that her husband always used to come to home with drunken mood, besides, alleging that his sisters, namely, Menaga, Mangaiyarkarasi and Jayamala, have abused her uttering obscene words and even his mother-Rani slapped on her face and caused wound by nails and that his sister's husband Mr.Megavannan had also attempted to assault on the respondent/wife <http://www.judis.nic.in> C.M.A.No.607 of 2015 and her father using deadly weapon. Apart from filing a criminal complaint, the appellant/wife and her family members published the said alleged criminal complaint in a local news paper and thereafter, they have left from their house to avoid harassment of the police and when they moved advance bail, conditional bail was also granted by the Court of law. Therefore, considering the fact that the wife and her family members were taking all the efforts to put them in jail on reckless allegations against the respondent/husband and his family members including his two unmarried sisters, learned trial Court satisfying with the evidence adduced by the respondent/husband that he took all efforts for reunion with the appellant/wife, but, she did not cooperate for the same, has rightly granted the decree for divorce.

11. Secondly, he argued, when the notice in the divorce petition was served on the appellant/wife, after receipt of such notice, instead of contesting the case, she only filed criminal complaint under Sections 498-A, 294(b), 323, 406, 506(i) of IPC read with Section 4 of Dowry Prohibition Act alleging false dowry harassment and based on the said complaint, a case was registered against the husband and his family members and finally, during the enquiry before the police, she deposed that she wanted to live with her husband in a separate home leaving away from the respondent's family,

but, contrary to such deposition, she had chosen to file a false complaint against her husband alleging dowry harassment. Seeing such an attitude of the wife and unbearable to the mental cruelty, the respondent's father also died due to heart attack, that has also caused mental http://www.judis.nic.in C.M.A.No.607 of 2015 cruelty to the husband and his family members and therefore, by taking note of reckless attitudes of wife, learned trial Court has rightly granted the divorce, hence, no interference is called for.

12. Thirdly, he argued, when the wife lodged a criminal complaint against her husband and his family members for the alleged offences under Sections 498-A, 294(b), 323, 406, 506(i) of IPC read with Section 4 of Dowry Prohibition Act apprehending arrest and harassment from the police, the respondent and his family members have taken all the steps for reunion through relatives and well-wishers, but, the wife failed to heed and neglected to come back to the matrimonial home, therefore, learned trial Court has rightly accepted the case of the husband that the wife was responsible for chaos created in the family and thereby it has granted the divorce, hence, he contended, the present appeal filed by the appellant/wife is liable to be dismissed.

13. Distinguishing the judgment of the Hon'ble Apex Court in Mangayakarasi's case (cited supra), learned counsel for the respondent, referring to paragraph No.15 of the said judgment, submitted that the said case relied on by the learned counsel for the appellant squarely supports the case in hand and stated that if any unsubstantiated allegation of dowry demand or such other allegation has been made and the husband and his family members are exposed to criminal litigation and ultimately if it is found that such allegation is unwarranted and without basis and if that act of the wife itself forms the basis http://www.judis.nic.in C.M.A.No.607 of 2015 for the husband to allege that mental cruelty has been inflicted on him, certainly, in such circumstances, if a petition for dissolution of marriage is filed on that ground and evidence is tendered before the original court alleging mental cruelty, it could well be appreciated for the purpose of dissolving the marriage on that ground. Therefore, in view of the said ratio laid down in Mangayakarasi's case (cited supra), which squarely applies to the case of the present case, the present appeal filed by the wife challenging the impugned order granting divorce is liable to be dismissed.

14. I also find merit on the above said submissions of the learned counsel for the respondent/husband. Firstly, after giving birth to a female child on 12.01.2011, the appellant/wife went to her parental home on the alleged ground of getting better nourishment and therefore, it goes without saying that the appellant alone, on her own volition, went to her parental home. Thereafter, as she failed to come back to the matrimonial home, the respondent/husband made a complaint on 16.01.2012 and 21.02.2012 seeking for reunion and on enquiry by the police, the wife once again started quarrelling with the husband with an intention to have a separate family and to keep him out of his family. Finally, when she refused to come back, on 08.03.2012, the respondent/husband filed a divorce case under Section 22 and 10(X) of the Indian Divorce Act in I.D.O.P.No.84 of 2012 before the learned Principal District Court, Chengalpattu, which was, later on, transferred to the file of learned Principal District Court-II, Kanchipuram, and renumbered as I.D.O.P.No.15 of 2013. On receipt of notice in the http://www.judis.nic.in C.M.A.No.607 of 2015 divorce petition, instead of pursuing the same, she filed a criminal complaint under Sections 498-A, 294(b), 323, 406, 506(i) of IPC and Section 4 of the Dowry Prohibition Act against her husband,

father, mother, two unmarried sisters and one married sister and her husband. In the said criminal complaint, when her statement was recorded, she alleged that her husband demanded dowry, but, for failure to comply with such demand of dowry, she was harassed by her husband's family members. She further alleged that her husband's sisters, namely, Menaga, Mangaiyarkarasi and Jayamala, have abused her using obscene words, besides alleging that her mother-in-law Rani slapped on her face and made wound by nails and that his sister's husband Mr.Megavannan attempted to assault her with deadly weapon. Based on the said criminal complaint, his parents, sisters and brother-in-law were arrayed in the criminal case as accused. The appellant/wife also flashed the said complaint in the local newspaper causing unnecessary humiliation and harassment and mental cruelty to the respondent/husband and his family members. Besides, after filing the above said criminal complaint, the husband and his family members were hiding themselves to avoid harassment at the hands of the police and when they had moved anticipatory bail, the same was also granted by the Court of law. It was also the case of the respondent/husband that in view of criminal complaint filed against him, he lost his job in Kalpakkam Atomic Power Station and that his father also died due to heart attack. Because of filing of criminal complaint, the respondent husband and his family members, in order to escape from the arrest by police, went underground till they obtained bail, however, due to the registration of a criminal case, he lost his job. Moreover, <http://www.judis.nic.in> C.M.A.No.607 of 2015 his father also died on 12.07.2014 during the pendency of the criminal case.

15. Therefore, filing of a criminal case by the appellant/wife only on 03.05.2012 against the respondent/husband, his father, mother, two married sisters and one married sister and her husband for offences under Sections 498-A, 294(b), 323, 406, 506(i) of IPC and Section 4 of the Dowry Prohibition Act, during the pendency of I.D.O.P.No.15 of 2013 filed on 08.03.2012, would show that the appellant/wife, as a counter blast, has filed this criminal case and caused mental cruelty and agony not only to her husband but also to his entire family members. Since all of them obtained anticipatory bail and subsequently criminal complaint filed against them proved as a false one, the learned Judicial Magistrate Court, Thirukazhukundram, acquitted all the accused in C.C.No.223 of 2012, dated 07.02.2015, therefore, I am of the considered view that the mental and physical cruelty and nightmare incurred by the husband, when his family members were sought to be maliciously prosecuted, would definitely cause huge mental cruelty. In view of miserable hardship caused by the wife, no one would think of living together with such a bogus partner, because, it is not safe for the reason that she may again resort to police complaint with new false allegation.

16. Now, given the facts and circumstances of the case, let us go to the judgment of the Hon'ble Apex Court in Mangayarkarasi's case (cited supra). For better appreciation, paragraph No.15 thereof is extracted below:-

<http://www.judis.nic.in> C.M.A.No.607 of 2015 “15. It cannot be in doubt that in an appropriate case the unsubstantiated allegation of dowry demand or such other allegation has been made and the husband and his family members are exposed to criminal litigation and ultimately if it is found that such allegation is unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege that mental cruelty has been inflicted on him, certainly, in such circumstance

if a petition for dissolution of marriage is filed on that ground and evidence is tendered before the original court to allege mental cruelty it could well be appreciated for the purpose of dissolving the marriage on that ground. However, in the present facts as already indicated, the situation is not so. Though a criminal complaint had been lodged by the wife and husband has been acquitted in the said proceedings the basis on which the husband had approached the Trial Court is not of alleging mental cruelty in that regard but with regard to her intemperate behaviour regarding which both the courts below on appreciation of the evidence had arrived at the conclusion that the same was not proved. In that background, if the judgment of the High Court is taken into consideration, we are of the opinion that the High Court was not justified in its conclusion.” A mere reading of first part of paragraph No.15 shows that if any unsubstantiated allegation of dowry demand or such other allegation has been made and the husband and his family members are exposed to criminal litigation and ultimately if it is found that such allegation is unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege that mental cruelty has been inflicted on him, certainly, in such circumstances, if a petition for dissolution of marriage is filed on that ground and evidence <http://www.judis.nic.in> C.M.A.No.607 of 2015 is tendered before the original court to allege mental cruelty, it could well be appreciated for the purpose of dissolving the marriage on that ground. In this case, admittedly, as highlighted above, when the respondent/husband has filed a divorce case on 08.03.2012 in I.D.O.P.No.84 of 2012, which was later on transferred to the file of learned Principal District Court No.-II, Kanchipuram, and renumbered as I.D.O.P.No.15 of 2013, after receipt of notice in the divorce petition, on 03.05.2012, the appellant/wife has filed a criminal complaint for offences under Sections 498-A, 294(b), 323, 406, 506(i) of IPC and Section 4 of the Dowry Prohibition Act against the respondent/husband, father, mother, two unmarried sisters and one married sister and her husband. During the enquiry before the police, she deposed that she was demanded additional dowry, but, since she did not comply with the same, she was harassed by his family members. She further alleged that the respondent/husband used to come home in drunken mood. She again alleged that on 15.12.2012, his sisters, namely, Menaga, Mangaiyarkarasi and Jayamalai, have abused her uttering obscene words and assaulted on her, besides, his mother-Rani slapped on her face and caused wound by nails. In addition thereto, she alleged that his sister's husband Mr.Megavannam had attempted to assault her and her father using deadly weapon. Such allegations of the respondents/wife did not stop there and she went to the extent of flashing the said complaint in a local news paper and therefore, such an reckless attitude of her shows that she wanted to tarnish the image of her husband and his family members.

17. Besides, filing of criminal complaint against the respondent/husband and his <http://www.judis.nic.in> C.M.A.No.607 of 2015 family members for offences under Sections 498-A, 294(b), 323, 406, 506(i) of IPC and Section 4 of the Dowry Prohibition Act could be seen as an utterly false one from the averments of the appellant/wife in the additional counter affidavit dated 11.04.2014 filed by her before the Court below and for proper appreciation, paragraph No.3 thereof is extracted below:-

“3. The respondent submits that thereafter, the petitioner has not taken any steps to get separate matrimonial home and he never visited the respondent and child. On the other hand, the petitioner, his mother, sisters and his father, uncle have continued to

demand dowry of swift car, Rs.2,00,000/- cash, 10 sovereigns of additional jewels and 1 ground house site, to bring back the respondent and the child. The respondent submits that for the very same conditions, the petitioner had not brought the respondent to the matrimonial home after birth of child. The petitioner's sisters have abused the respondent in filthy language and also assaulted her in the brutal manner for non bringing of dowry as demanded by them, while the respondent brought the child to the matrimonial home. The petitioner's mother has plucked the child from the respondent and beaten the respondent and abused her. The petitioner has abused the respondent and assaulted her and also trying to attack her with wooden rod with the help of his uncle. Hence, the respondent has no other legal remedy for illegal and criminal acts of the petitioner, his mother, sisters and others, lodged a complaint before the police. The police called them for enquiry and further course of mediation and counselling in connection with the enquiry and counselling in CSR No.12 of 2012. But, the petitioner, his sisters and others have not come to police station for enquiry/mediation/counselling and because of their <http://www.judis.nic.in> C.M.A.No.607 of 2015 guilty feeling, they have obtained anticipatory bail and no way connected for counselling for reunion." The above stand of the appellant/wife shows that though the respondent/husband is the son of her paternal aunt and her father is the paternal uncle of the respondent/husband, she wanted to take him away from the matrimonial home to live separately deserting his two unmarried sisters. Since the respondent/husband refused to heed such demand, she filed a criminal complaint under Sections 498-A, 294(b), 323, 406, 506(i) of IPC and Section 4 of the Dowry Prohibition Act on 03.05.2012 after filing of divorce petition by the husband on 08.03.2012. Even paragraph No.4 of the additional counter affidavit dated 11.04.2014, which is extracted below;

"4. The respondent submits that all their above criminal acts amount to offences as per our law of land. The respondent is being a victim and lodging a complaint against the culprits, who done all their illegal and criminal towards the victim is legal remedy given to her by the law of land and accordingly, she exhausted the same in accordance with law. The exhausting of legal remedy by the victim/respondent will not amount to act of cruelty. In fact, the respondent has tolerated all the illegal criminal acts of the petitioner, his mother, sister and other for long period, only because she wanted to live with the petitioner with the child. But, they have caused maximum, untold, intolerable criminal acts, forced the respondent to lodge a complaint against them." shows that filing of criminal complaint by her is legal remedy and therefore, the same will not amount to cruelty. Therefore, learned Judicial Magistrate, finding her allegations as <http://www.judis.nic.in> C.M.A.No.607 of 2015 utter false, vide judgment dated 07.02.2015 passed in C.C.No.223 of 2013, acquitted the husband and his family members by holding that the appellant/wife has filed utterly false case against her husband and his parents including his three sisters. Therefore, when the allegation made by the appellant/wife under Sections 498-A, 294(b), 323, 406, 506(i) of IPC and Section 4 of the Dowry Prohibition Act has been found utterly false, there can be no manner of doubt that the said conduct of the wife

in levelling false allegations against the husband and his family members and again forcing them to approach the Court seeking anticipatory bail would definitely amount to mental cruelty. Thus, by taking note of all these vital facts, learned trial Court has rightly granted the divorce, hence, this Court, finding no perversity in the order passed by the learned trial Court, is not inclined to interfere with the same.

18. In fine, for the reasons stated above, the Civil Miscellaneous Appeal stands dismissed by confirming the judgment and decree passed by the learned trial Court. No Costs. M.P.No.1 of 2015 is closed.

23.09.2020 rkm Index: Yes/No T.RAJA, J.

rkm <http://www.judis.nic.in> C.M.A.No.607 of 2015 To Principal District Court-II, Kanchipuram.

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