

A

MANGAYARKARASI

v.

M. YUVARAJ

(Civil Appeal Nos. 1912-1913 of 2020)

B

MARCH 03, 2020

**[R. BANUMATHI, S. ABDUL NAZEER
AND A. S. BOPANNA, JJ.]**

C *Hindu Marriage Act, 1955 – ss.9, 13 – Respondent-husband filed petition being H.M.O.P No.13/2010 (old No.532/2007) seeking dissolution of marriage – Appellant-wife filed petition for restitution of conjugal rights – Petitions clubbed – Vide judgment dtd. 26.11.10, the petition filed by husband was dismissed while that of the wife’s was allowed – Husband’s appeal dismissed – High Court allowed the second appeal filed by husband and dissolved the marriage between the parties – Held: Husband filed petition at the first instance, seeking dissolution of marriage in H.M.O.P No.65/2007 (petition not pressed) alleging that the behaviour of wife was intemperate – Subsequent petition was filed on same set of allegations – It was alleged that she had also gone over to husband’s place of employment and demeaned him – Trial Court concluded that the evidence was insufficient to prove the allegations made – In a proceeding of the present nature where the Trial Court referred to the evidence and First Appellate Court being the last Court for reappreciation of evidence undertook the said exercise and arrived at concurrent decision on the matter, neither the High Court in the limited scope available to it in a second appeal u/s.100, CPC is entitled to reappreciate the evidence nor Supreme Court in the instant appeals is required to do so – Questions of law framed by High Court disclose that they do not qualify as substantial questions of law – Further,, though a criminal complaint was also lodged by the wife wherein husband was acquitted, the basis on which the husband approached the Trial Court is not of alleging mental cruelty in that regard but w.r.t her intemperate behaviour regarding which both the courts below concluded that the same was not proved – In that background, High Court was not justified in its conclusion – Impugned judgment set aside – Judgment dtd. 26.11.10 is restored*

H – Code of Civil Procedure, 1908 – s.100.

Allowing the appeals, the Court

A

HELD: 1.1 The Trial Court having taken note of the evidence tendered through PW1 to PW4 had arrived at the conclusion that the said evidence was insufficient to prove the allegations made in the petition. In such circumstance, in a proceeding of the present nature where the Trial Court has referred to the evidence and the First Appellate Court being the last Court for reappreciation of the evidence has undertaken the said exercise and had arrived at a concurrent decision on the matter, the position of law is well settled that neither the High Court in the limited scope available to it in a Second Appeal under Section 100 of the Civil Procedure Code is entitled to reappreciate the evidence nor this Court in the instant appeals is required to do so. The very perusal of the questions framed would disclose that the questions raised does not qualify as substantial questions of law when the manner in which the parties had proceeded before the Trial Court is noticed. The questions framed in fact provides scope for re-appreciation of the evidence and not as substantial questions of law. [Paras 12, 13][1043 A-C; 1043 E-F]

B

C

D

1.2 Though the subsequent petition was filed by the husband in H.M.O.P No.13/2010 which was originally numbered as H.M.O.P No.532/2007, the same was also filed on the same set of allegations. Further at that point in time the wife had also filed a petition under Section 9 of the Hindu Marriage Act. In that background, though subsequently in the proceedings before the Trial Court a reference is made to the criminal proceedings, as on the date when the cause of action had arisen for the husband who initiated the proceedings seeking dissolution of the marriage, the criminal case filed against him was not the basis whereby a ground was raised of causing mental cruelty by filing such criminal complaint. If that be the position, a situation which was not the basis for initiating the petition for dissolution of marriage and when that was also not an issue before the Trial Court so as to tender evidence and a decision be taken, the High Court was not justified in raising the same as a substantial question of law and arriving at its conclusion in that regard. The tenor of the substantial questions of law as framed in the instant case and

E

F

G

H

- A decision taken on that basis if approved, it would lead to a situation that in every case if a criminal case is filed by one of the parties to the marriage and the acquittal therein would have to be automatically treated as a ground for granting divorce which will be against the statutory provision. Though a criminal complaint was 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. [Paras 14, 15 and 18][1044 A-D; 1044 E-F; 1044-H; 1045 A-B]

- Naveen Kohli v. Neelu Kohli* (2006) 4 SCC 558 : [2006] 3 SCR 53; *Sanghamitra Ghosh vs. Kajal Kumar Ghosh* (2007) 2 SCC 220 : [2006] 9 Suppl. SCR 156; *Samar Ghosh v. Jaya Ghosh* (2007) 4 SCC 511 : [2007] 4 SCR 428 – referred to.

Case Law Reference

- | | | | |
|---|-------------------------|-------------|---------|
| | [2006] 3 SCR 53 | referred to | Para 16 |
| | [2006] 9 Suppl. SCR 156 | referred to | Para 16 |
| E | [2007] 4 SCR 428 | referred to | Para |

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 1912-1913 of 2020.

- F From the Judgment and Order dated 20.07.2018 of the High Court of Judicature at Madras in CMSA Nos. 23 and 24 of 2016.

S. Nandakumar, Ms. Deepika Nanda Kumar, Naresh Kumar, Advs. for the Appellant.

- G B. Ragunath, Mrs. N.C. Kavitha, Vijay Kumar, Advs. for the Respondent.

H

The Judgment of the Court was delivered by

A

A. S. BOPANNA, J.

1. Leave granted.

2. The appellant is before this Court assailing the judgment dated 20.07.2018 passed by the High Court of Judicature at Madras in CMSA Nos.23 & 24 of 2016. The appellant is the wife of the respondent. Since the rank of parties was different in the various proceedings as both the parties had initiated proceedings against each other, for the sake of convenience and clarity the appellant herein would be referred to as 'wife' and the respondent herein would be referred to as 'husband' wherever the context so admits.

B

C

3. The husband initiated the petition under Section 13 of the Hindu Marriage Act seeking dissolution of the marriage. The wife on the other hand initiated the petition under Section 9 of the Hindu Marriage Act seeking restitution of conjugal rights. The respective petitions registered as H.M.O.P No.13/2010 (old No.532/2007) and H.M.O.P No.27/2008 were clubbed and the learned Subordinate Judge, Pollachi by the judgment dated 26.11.2010 dismissed the petition filed by the husband and allowed the petition filed by the wife. The husband claiming to be aggrieved by the said judgment preferred the appeals in CMA No.90/2011 and 71/2011 before the Additional District & Sessions Judge, Coimbatore, namely, the First Appellate Court. The First Appellate Court having considered the matter, dismissed the appeals filed by the husband. The husband, therefore, filed the Second Appeal under Section 100 of the Code of Civil Procedure before the High Court of Judicature at Madras in CMSA Nos.23 & 24 of 2016. The High Court has through the impugned judgment dated 20.07.2018 allowed the appeals, set aside the order for restitution of conjugal rights and dissolved the marriage between the parties herein. It is in that light the appellant-wife is before this Court in these appeals.

D

E

F

4. The undisputed position is that the marriage of the parties was solemnised on 08.04.2005 which in fact was after the parties had fallen in love with each other. As per the averments, the wife is elder to the husband by six to seven years. The parties also have a female child born on 03.01.2007. During the subsistence of the marriage certain differences cropped up between the parties. The husband alleged that the wife was of quarrelsome character and used filthy language in the presence of relatives and friends and also that she had gone to the college where the

G

H

- A husband was employed and had used bad language in the presence of the students which had caused insult to him. The husband, therefore, claiming that he belongs to a respectable family and cannot tolerate such behaviour of the wife got issued a legal notice dated 07.12.2006 which was not responded to by the wife. The husband therefore filed a petition under Section 13 of Hindu Marriage Act in H.M.O.P No.65/2007 seeking dissolution of marriage. The husband contends that the wife appeared before the Trial Court and on the assurances put forth by her of leading a normal married life the petition was not pressed further. The husband alleges that merely about five days thereafter the wife went to the college and abused him and also left the marital home on 12.04.2007. In that background on the very allegations which had been made in the first instance, the petition seeking dissolution of marriage in H.M.O.P No.13/2010 (old No.532/2007) was filed.

5. The wife who appeared and filed objection statement disputed the allegations of the husband. The factual aspects with regard to the qualification of the husband at the time of the marriage and his employment were also disputed. It was contended by her that after marriage they resided together at Sathiyamangalam up to the year 2005 and thereafter at Saravanampatti till December, 2006. It was contended that the distance between the hometown of the parents of the husband and the said places referred to is more than 120 kms and travelling the said distance was difficult. Hence the allegation of insulting them is not true. Subsequently when the relationship between the husband and his parents were cordial and were living together, it is claimed that the wife had behaved well with the relatives and the visitors. Hence the allegation about her rude behaviour is disputed. In respect of the legal notice issued by the husband on 07.12.2006 it is contended that during the pregnancy, the husband told her that his parents are insisting on issuing the legal notice and the husband did not mean what had been indicated therein. Within about 25 days thereafter the wife had delivered a female child and even in respect of the earlier petition in H.M.O.P No.65/2007 she was made to appear and submit about her readiness to live with him which she had done unsuspectingly. The said case was also stated to be instigated by his parents. In that light, the wife had denied the allegations and sought for dismissal of the petition.

6. In the petition filed by the wife under Section 9 of the Hindu Marriage Act seeking for restitution of conjugal rights she had referred

to the manner in which the marriage has taken place and had indicated that they are living separately without valid reasons and, therefore, sought for the relief. The husband having appeared filed the objection statement referring to the parties belonging to different communities as also the age difference. The further averments made in the petition were denied. The husband also referred to the complaint filed by the wife before the Negamam Police Station in Crime No.401/2007 in which the husband was arrested by the police and was in judicial custody for seven days. In that light, it was contended that the marriage between the parties had broken down to a point of no return, hence sought for dismissal of the petition.

7. The Trial Court framed the issues based on the rival contentions. The husband examined himself and the witnesses as PW1 to PW4 and exhibited the documents A1 to A5, while the wife examined herself and the witnesses as RW1 to RW3 and exhibited the documents as R1 to R3. The Trial Court after referring to the evidence tendered, has dismissed the petition. While doing so the Trial Court had referred in detail to the evidence that had been tendered and in that light insofar as the allegations, the Trial Court was of the opinion that the husband has not examined any witnesses to prove that after 15 months of the marriage the quarrel started between them and that he had to shift about seven houses due to quarrelling nature of the wife with the neighbours. It was further observed that from the witnesses who have been examined, the evidence do not relate to the allegation that the wife had abused the husband in front of the students and the co-workers. In that light, the Trial Court noticed that the allegation made by the husband as PW1 and the relatives who were examined as witnesses (PW2 and PW3) had alleged that the wife had lived a luxurious life at her parent's house. In that light, the Trial Court taking into consideration the manner in which the marriage between the parties had taken place and also taking note that a female child was born from the wedlock on 03.01.2007 had formed the opinion that the petition seeking divorce had been filed at the instigation of the parents of the husband and there was no real cause for granting the divorce.

8. The First Appellate Court while considering the appeals filed by the husband had taken note of the evidence which had been referred to before the Trial Court and in that light having reappreciated the matter had upheld the judgment of the Trial Court.

A
B
C
D
E
F
G
H

A 9. In the Second Appeal filed before the High Court, it raised the following substantial questions of law for consideration:

B “1. Whether the courts below are correct and justified in failure to dissolve the marriage of the appellant and respondent on the ground of mental cruelty (when particularly the alleged complaint dated 24.11.2007 for dowry harassment lodged by the respondent against the appellant and her in-laws and the consequent arrest by the police would unquestionably constitutes cruelty as postulated in section 13(1)(ia) of the Hindu Marriage Act?

C 2. Whether the judgments of the courts below in dismissing the petition for divorce overlooking the subsequent event regarding the lodging of false criminal complaint by the respondent-wife for dowry harassment against the appellant and her in-laws are sustainable in law?

D 3. Whether the judgment of the courts below are correct and justified when particularly the criminal prosecution initiated in C.C.No.149 of 2008 on the file of the Judicial Magistrate No.2, Pollachi for dowry harassment is ended in Honorary acquittal?

 4. Whether the judgment of the courts below are perverse?”

E 10. It is in that background, the High Court had arrived at the conclusion that the criminal case filed by the wife, which was proceeded in C.C. No.149/2008 alleging that the husband had demanded dowry and in the said proceedings when the allegation is found to be false for want of evidence the same would be an act of inflicting mental cruelty as contemplated under Section 13(1)(ia) of the Hindu Marriage Act and in that light had allowed the appeal.

F 11. Heard Mr. S. Nandakumar, learned counsel for the appellant-wife, Mr. B. Ragunath, learned counsel for the respondent-husband and perused the appeals papers.

G 12. In the light of the contentions put forth by the learned counsel, a perusal of the papers would disclose that the petition for dissolution of marriage instituted by the husband was on the allegation that the behaviour of the wife was intemperate as she was quarrelsome with the neighbours, friends and with the visitors. It was alleged that she had also gone over to the place of employment of the husband and demeaned him in the presence of the students and other co-workers. In respect of the said

H

allegations, the Trial Court having taken note of the evidence tendered through PW1 to PW4 had arrived at the conclusion that the said evidence was insufficient to prove the allegations which were made in the petition. A bare perusal of the judgment passed by the Trial Court would indicate that the evidence available on record has been referred to extensively and a conclusion has been reached. The First Appellate Court has also referred to the said evidence, reappreciated the same and has arrived at its conclusion. In such circumstance, in a proceeding of the present nature where the Trial Court has referred to the evidence and the First Appellate Court being the last Court for reappreciation of the evidence has undertaken the said exercise and had arrived at a concurrent decision on the matter, the position of law is well settled that neither the High Court in the limited scope available to it in a Second Appeal under Section 100 of the Civil Procedure Code is entitled to reappreciate the evidence nor this Court in the instant appeals is required to do so.

13. It is in that view, we have not once again referred to the evidence which was tendered before the Trial Court which had accordingly been appreciated by the Trial Court. In such situation the High Court had the limited scope for interference based on the substantial question of law. The substantial questions of law framed by the High Court has been extracted and noted in the course of this judgment. At the outset, the very perusal of the questions framed would disclose that the questions raised does not qualify as substantial questions of law when the manner in which the parties had proceeded before the Trial Court is noticed. The questions framed in fact provides scope for re-appreciation of the evidence and not as substantial questions of law. As noticed, in the instant facts the husband filed a petition at the first instance, seeking dissolution of marriage in H.M.O.P No.65/2007 and the same was predicated on the allegation about the wife using filthy language in the presence of the relatives and friends and also using such language in the presence of the students of the husband. It is in that light, the husband alleged cruelty and sought for dissolution of marriage on that ground. It is no doubt true that the said petition which was initially filed was not pressed though the contentions of the parties in that regard is at variance, inasmuch as the husband contends that the petition was not pressed as the wife had assured of appropriate behaviour henceforth, while the wife contends that the said proceedings had been initiated at the instigation of his parents and had accordingly not been pressed thereafter.

H

A 14. Be that as it may, though the subsequent petition was filed by
the husband in H.M.O.P No.13/2010 which was originally numbered as
H.M.O.P No.532/2007, the same was also filed on the same set of
allegations. Further at that point in time the wife had also filed a petition
under Section 9 of the Hindu Marriage Act. In that background, though
B subsequently in the proceedings before the Trial Court a reference is
made to the criminal proceedings, as on the date when the cause of
action had arisen for the husband who initiated the proceedings seeking
dissolution of the marriage, the criminal case filed against him was not
the basis whereby a ground was raised of causing mental cruelty by
filing such criminal complaint. If that be the position, a situation which
C was not the basis for initiating the petition for dissolution of marriage and
when that was also not an issue before the Trial Court so as to tender
evidence and a decision be taken, the High Court was not justified in
raising the same as a substantial question of law and arriving at its
conclusion in that regard. A perusal of the judgment of the High Court
D indicates that there is no reference whatsoever with regard to the
evidence based on which the dissolution of marriage had been sought,
which had been declined by the Trial Court and the First Appellate Court
and whether such consideration had raised any substantial question of
law. But the entire consideration has been by placing reliance on the
judgment which was rendered in the criminal proceedings and had granted
E the dissolution of the marriage. The tenor of the substantial questions of
law as framed in the instant case and decision taken on that basis if
approved, it would lead to a situation that in every case if a criminal case
is filed by one of the parties to the marriage and the acquittal therein
would have to be automatically treated as a ground for granting divorce
which will be against the statutory provision.
F

 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
G 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
H 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.

16. The learned counsel for the respondent however, contended that ever since the year 2007 the parties have been litigating and were living separately. In that situation it is contended that the marriage is irretrievably broken down and, therefore, the dissolution as granted by the High Court is to be sustained. The learned counsel has relied on the decisions in the case of *Naveen Kohli vs. Neelu Kohli* (2006) 4 SCC 558, in the case of *Sanghamitra Ghosh vs. Kajal Kumar Ghosh* (2007) 2 SCC 220 and in the case of *Samar Ghosh vs. Jaya Ghosh* (2007) 4 SCC 511 to contend that in cases where there has been a long period of continuous separation and the marriage becomes a fiction it would be appropriate to dissolve such marriage. On the position of law enunciated it would not be necessary to advert in detail inasmuch as the decision to dissolve the marriage apart from the grounds available, will have to be taken on case to case basis and there cannot be a strait jacket formula. This Court can in any event exercise the power under Article 142 of the Constitution of India in appropriate cases. However, in the instant facts, having given our thoughtful consideration to that aspect we notice that the parties hail from a conservative background where divorce is considered a taboo and further they have a female child born on 03.01.2007 who is presently aged about 13 years. In a matter where the differences between the parties are not of such magnitude and is in the nature of the usual wear and tear of marital life, the future of the child and her marital prospects are also to be kept in view, and in such circumstance the dissolution of marriage merely because they have been litigating and they have been residing separately for quite some time would not be justified in the present facts, more particularly when the restitution of conjugal rights was also considered simultaneously.

17. In that view, having arrived at the conclusion that the very nature of the substantial questions of law framed by the High Court is not justified and the conclusion reached is also not sustainable, the judgment of the High Court is liable to be set aside.

- A 18. In the result, the judgment dated 20.07.2018 passed in CMSA Nos. 23 & 24 of 2016 is set aside. The judgment dated 26.11.2010 passed in H.M.O.P Nos.13/2010 and H.M.O.P No.27/2008 and affirmed in CMA No.90/2011 and CMA No.71/2011 are restored. The Appeals are accordingly allowed with no order as to costs.
- B 19. Pending applications if any, shall also stand disposed of.

Divya Pandey

Appeals allowed.