BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.01.2025

Pronounced On : 19.03.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A(MD) Nos.460 & 1515 of 2024
and
C.M.P.(MD)No.15844 of 2024

L.Santhanakrishnan ... Appellant / Petitioner in both C.M.As

... Respondent / Respondent in both C.M.As

COMMON PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Courts Act to call for the records relating to the Judgment decree dated 06.02.2024 made in H.M.O.P.Nos.443 & 445 of 2023 on the file of the Family Court, Karur and set aside the same and consequently, grant divorce to the appellant.

For Appellant : Mr.G.Gomathisankar
For Respondent : Mr.S.Gokulraj
(in both C.M.As)

COMMON ORDER

(Order of the Court was made by G.R.SWAMINATHAN, J.)

The marriage between Santhanakrishnan and Nirmala was solemnized on 01.07.2018 at Arulmighu Pasupatheeswara Temple, Karur as per Hindu rites and customs. No child was born through the wedlock. The parties are remaining separate since 09.12.2020. Seeking restitution of conjugal rights, Nirmala filed H.M.O.P No.29 of 2021 before the Sub Court, Karur. It was later transferred to the Family Court, Karur and re-numbered as H.M.O.P.No.445 of 2023. Santhanakrishnan had filed H.M.O.P.No.400 of 2021 before the Family Court, Coimbatore. It was later transferred to the Principal Sub Court, Karur and re-numbered as H.M.O.P.No.138 of 2022 and again, transferred to the Family Court, Karur and re-numbered as H.M.O.P.No. 443 of 2023. Both the H.M.O.Ps were tried together. Santhanakrishnan examined himself as P.W.1. Ex.P1 to Ex.P13 were marked on his side. Nirmala examined herself as R.W.1. Ex.R1 to Ex.R4 were marked on her side. After consideration of the evidence on record, the Family Judge, Karur allowed H.M.O.P.No.445 of 2023 and dismissed H.M.O.P.No.443 of 2023 vide common order dated 06.02.2024. Challenging the same, these civil miscellaneous appeals have been filed. C.M.A.(MD)No.460 of 2024 is directed against the order made in

H.M.O.P.No.443 of 2023. C.M.A.(MD)No.1515 of 2024 is directed against the order made in H.M.O.P.No.445 of 2023.

2.The learned counsel appearing for the appellant / husband reiterated all the contentions set out in the memoranda of grounds of appeals. He pointed out that the evidence on record would lead one to the irresistible conclusion that the grounds projected in the divorce petition are well founded. He also added that the relationship between the parties has irretrievably broken down and that no purpose will be served in keeping the marital relationship alive. He relied on the decision rendered in **C.M.S.A No.40 of 2008 (*Ravi Kumar Vs. Malarvhizhi @ S.Kokila*)** in support of his contentions. He called upon this Court to set aside the impugned orders and allow these appeals.

3.Per contra, the learned counsel appearing for the respondent submitted that the impugned order is well reasoned and that it does not call for interference.

4.We carefully considered the rival contentions and went through the materials on record. For both the parties, the marriage that took place on 01.07.2018 was the beginning of their second innings. Their

respective first marriages were dissolved through court of law. The appellant wants to dissolve the second marriage also. He has rested his case on two grounds. The first ground is that the respondent is suffering from venereal disease in a communicable form. The second ground is a more standard one. According to the appellant, the conduct of the respondent constituted cruelty.

5.Section 13(1)(v) of the Hindu Marriage Act, 1955 provides for dissolution of marriage by a decree of divorce on the ground that the other party has been suffering from venereal disease in a communicable form. Alleging that the other spouse is suffering from venereal disease casts serious stigma. Therefore, in the very nature of things, strict proof of this allegation would be required. Section 13(1) of the Hindu Marriage Act, 1955 has set out as many as seven grounds on which divorce can be sought either by the husband or the wife. We are of the view that the ground of adultery and the ground that the other party is suffering from venereal disease in a communicable form can be said to have been established only if they meet a higher threshold. As regards the ground under Section 13(1)(v), we tend to take the view that the fact that the other party is suffering from the particular affliction is not sufficient by itself to grant divorce. The other party must be given opportunity to show

that his or her condition is not an outcome of a morally deviant conduct but is due to some circumstance beyond his or her control. Two instances can be recalled. A few years ago, a lady had gone for pregnancy check up in a Government Hospital where she came to be infected with HIV on account of transfusion of contaminated blood. In this situation, will it be fair to dissolve her marriage for no fault of hers at the instance of her spouse? We would say “No”. Namdeo Dhasal is an iconic and revolutionary poet and a dalit activist. His wife Mallika Amarsheik has written an autobiography titled “I Want To Destroy Myself”. She recounts how her promiscuous husband gave her sexually transmitted diseases. Let us ask a hypothetical question. Could Namdeo Dhasal have filed a divorce petition on the ground that his wife was suffering from STD? The answer is again “No”. That is why, we hold that Section 13(1)(v) of the Hindu Marriage Act, 1955 should be understood in the manner indicated above. The other party, even if afflicted with a venereal disease in a communicable form should be given an opportunity to show that he or she was not at fault.

6.Coming to the case on hand, we have to straightaway hold that the appellant has miserably failed to prove the allegation that the respondent herein is suffering from the condition mentioned in the

provision. Unlike in the relied on case (**Ravi Kumar vs. Malarvizhi @ Kokila**), the appellant did not file any I.A for subjecting the respondent to any medical test or examination. No diagnostic report has been marked. What have been marked are the discharge summaries and other reports issued by an ayurvedic centre where the respondent was admitted for rejuvenation treatment. Though Ayurveda is a highly respected and recognised system of Indian medicine, the allegation that the respondent is suffering from venereal disease could have been proved only by marking the blood test report. No such report has been marked. Ex.P10 is the laboratory report pertaining to the appellant only. Ex.P3 to Ex.P6 are the discharge summaries issued by Arya Vaidya Pharmacy. From a reading of the aforesaid discharge summaries, one cannot come to the conclusion that the respondent was suffering from any venereal disease.

7.It is not as if the divorce petition was filed the day after contracting the marriage. The parties had resided together for close to two years. During this period, if the appellant had entertained the suspicion projected in the divorce petition, he would have definitely taken the respondent to a specialist-doctor for examination. But no medical witness was examined. In fact, the statutory provision would

be satisfied only by showing that the respondent was suffering from venereal disease in a communicable form. In other words, it is not sufficient to merely show that the respondent was suffering from venereal disease. In this case, the appellant has miserably failed to prove that the respondent was suffering from any kind of venereal disease. If the respondent was suffering from the disease as alleged by the appellant, the appellant also would have been affected. The appellant in his legal notice dated 28.01.2021 (Ex.R4) has claimed that he suffered from physical ailments after having sexual intercourse with the respondent and that he took treatment for the same. If that be so, the appellant should have marked his medical reports. He had not done so. Therefore, one can safely come to the conclusion that a false allegation has been made.

8.It appears that the respondent was having some gynecological issues. According to the respondent, she only had vaginal discharge medically know as leukorrhea which is recognised to be easily treatable. The court below therefore rightly came to the conclusion that the ground under Section 13(1)(v) has not at all been established.

9.The other ground projected by the appellant is that the respondent had treated him with cruelty. To substantiate the same, the appellant had made the following allegations:

"a. She was a spendthrift.
b. She was addicted to watching porn and often indulged in masturbation.
c. She refused to do household chores.
d. She ill-treated her in-laws.
e. She used to engage herself in long telephonic conversations."

10.The institution of the O.P was not preceded by any legal notice. Ex.R4 legal notice was issued almost contemporaneously. It is silent on most of the allegations made above. To establish his case, the appellant examined only himself. One of the charges made by the appellant is that the respondent ill-treated her in-laws. To prove the same, he could have examined at least one of them. He had not done so. None of the allegations made by the appellant have been substantiated or corroborated.

11.The learned counsel for the appellant would argue that the allegation that the respondent used to watch porn and indulge in masturbation cannot be corroborated and that it is a case of oath against oath. According to him, no husband would make such an allegation unless there is truth therein.

12.We are not persuaded by the said submission. Watching porn (other than the statutorily prohibited type) in a private setting would not constitute an offence. One of us (G.R.S, J.) had held in ***P.G. Sam Infant Jones v. State, (*2021 SCC OnLine Mad 2241)** as follows :

> "5.Viewing pornography privately will not constitute an offence. Offence is an act that is forbidden by law and made punishable. That is the definition found in Section 40 of IPC. As on date, there is no provision prohibiting such private acts. There are some who even elevate it as falling within one's right to free expression and privacy. But child pornography falls outside this circle of freedom. Section 67-B of the Information Technology Act, 2000 penalises every kind of act pertaining to child pornography. Whoever publishes or transmits or causes to be published or transmitted material in any electronic form which depicts children engaged in sexually explicit act or conduct; or creates text or digital images, collects, seeks, browses, downloads, advertises, promotes, exchanges or distributes material in any electronic form depicting children in obscene or indecent or sexually explicit manner; or cultivates, entices or induces children to online relationship with one or more children for and on sexually explicit act or in a manner that may offend a reasonable adult on the computer resource; or facilitates abusing children online, or records in any electronic form own abuse or that of others pertaining to sexually explicit act with children is

liable to be punished. Therefore, even viewing child pornography constitutes an offence."

Having said so, we have to clarify that any addiction is bad and porn addiction definitely so. It would affect the viewer in the long run. Since it objectifies women and portrays them in a degrading manner, it cannot be morally justified. But personal and community standards of morality are one thing and breach of law is another. So long as the act of the respondent has not fallen foul of law, the appellant cannot seek divorce on this ground. Section 13(1)(i)(ia) is to the effect that a marriage can be dissolved if the respondent has "treated the petitioner with cruelty". Oxford Advanced Learner's Dictionary defines "treat" as behaving in a particular way towards somebody or something. In other words, the cruel conduct emanating from the respondent should be directed towards the petitioner. If the act in question concerns the respondent alone and it is not directed towards the petitioner, the act by itself would not constitute cruelty. The expression "treat" denotes intentional conduct. Thus, the act of the respondent in merely watching porn privately by itself may not constitute cruelty to the petitioner. It may affect the psychological health of the viewing spouse. That by itself will not amount to treating the other spouse cruelly. Something more is required. If a porn watcher compels the other spouse to join him or her,

that would certainly constitute cruelty. If it is shown that on account of this addiction, there is an adverse impact on the discharge of one's conjugal obligations, then it could furnish an actionable ground.

13.The case of the appellant is that the respondent would endlessly watch porn on her mobile phone. It is pertinent to note that the appellant did not call for forensic examination of the respondent's mobile phone. Any digital activity would leave behind a digital trail. Even without subjecting the instrument or equipment to forensic examination, it is possible to gather the details and particulars from the service providers. We consciously have not dealt with issue of spousal privacy in this context. This is because the appellant did not even put a suggestion in this regard to the respondent while cross-examining her.

14.The other allegation is that the respondent would indulge in masturbation. Calling upon a woman to respond to this averment itself is a gross infringement of her sexual autonomy. If after contracting marriage, a woman has sexual relationship outside marriage, it would furnish ground for divorce. However, indulging in self-pleasure cannot be a cause for dissolution of marriage. By no stretch of imagination, can it be said to inflict cruelty on the husband. The mandate of statute is that

unless it is shown that the petitioner has been treated with cruelty, the conduct of the respondent cannot attract Section 13(1)(i-a). When masturbation among men is acknowledged to be universal, masturbation by women cannot be stigmatised. While men cannot engage in sexual intercourse immediately after indulging in masturbation, that would not be the case with women. It has not been established that the conjugal relationship between the spouses would suffer if the wife has the habit of masturbation. The Hon'ble Supreme Court in ***Rajive Ratori v. UOI [2024) SCC OnLine SC 3217],*** while citing a NALSAR report dealing with the emotional and relational challenges faced by PWDs, referred to the fact that their emotional needs such as privacy and self-pleasure are often overlooked. When privacy is a fundamental right, it includes within its scope and reach spousal privacy too. The contours of spousal privacy would include various aspects of a woman's sexual autonomy. So long as something does not fall foul of law, the right to express oneself cannot be denied. Self-pleasure is not a forbidden fruit; its indulgence shall not lead to a precipitous fall from the Eden garden of marriage. After marriage, a woman becomes a spouse but she continues to retain her individuality. Her fundamental identity as an individual, as a woman, is not subsumed by her spousal status.

15.The respondent in her testimony had denied all the allegations made by the appellant. If the allegations made by the appellant were true, it is improbable that they would have been together for close to 2 years. The appellant has not furnished any evidence to show that the respondent failed to do household chores. The court below after a careful appreciation of the entire evidence on record came to the conclusion that the appellant had not proved his case. After a careful re-appreciation of the evidence on record, we are unable to take a contra view. We confirm the order passed by the court below. These Civil Miscellaneous Appeals are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) (R.P., J.)
19.03.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
SKM

To

The Judge, Family Court, Karur.

G.R.SWAMINATHAN, J.
AND
R.POORNIMA, J.

SKM

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