



C.M.A(MD)No.255 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 23.06.2025

PRONOUNCED ON:29.08.2025

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.255 of 2018

Ramesh Robinson

: Appellant/Petitioner

Vs.

Valarmathi

: Respondent /Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 55 of Indian Divorce Act, 1869, against the order passed by the learned Principal District Judge, Thoothukudi, in I.D.O.P.No.54 of 2011, dated 12.01.2017.

For Appellant : Mr.N.Dilip Kumar

For Respondent :Mr.A.D.Ganesamoorthi



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JUDGMENT

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This Civil Miscellaneous Appeal is directed against the order passed in I.D.O.P.No.54 of 2011, dated 12.01.2017, on the file of the Principal District Court, Thoothukudi, dismissing the petition for divorce filed under Section 10(1)(i) and 10(1)(x) of the Divorce Act.

2. It is not in dispute that the appellant/petitioner married the respondent/respondent on 12.04.1999 as per the Christian rites and customs in the house of the petitioner in the presence of pastor and due to their wedlock, they were blessed with a male child – Abishek.

3. For the sake of convenience and brevity, the parties will hereinafter be referred as per their status/ranking before the trial Court.

4. The petitioner/husband by alleging that the respondent has committed adultery and that he was subjected to cruelty, filed a petition under Section 10(1)(i) and 10(1)(i)(x) of the Divorce Act in I.D.O.P.No. 54 of 2011 seeking divorce. The respondent/wife filed a counter statement raising serious objections. Pending divorce petition, the



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respondent/wife filed a petition under Section 37 of the Drove Act claiming permanent alimony for herself and for her minor son in maintenance case in M.C.No.234 of 2014, for which the petitioner/husband filed a counter statement raising objections.

5. During joint trial, the petitioner examined himself as P.W.1 and exhibited four documents as Exs.P.1 to P.4. The respondent examined herself as R.W.1 and examined the Senior Manager of Indian Overseas Bank, Nazareth as R.W.2 and exhibited one document as Ex.R.1. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, passed a common order dated 12.01.2017, dismissing both the cases. Aggrieved by the order of dismissal of divorce petition, the husband has preferred the present Civil Miscellaneous Appeal.

6. The petitioner/husband alleges that the respondent/wife lacked affection towards him from the start, harboring a superiority complex about her family and showing disrespect to him and his family. He claims she used abusive language, causing him mental distress, and even on their first night, expressed dissatisfaction with their match. The petitioner



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further alleges that the respondent suspected his actions, threw household items at him, and behaved aggressively, making their life together unbearable. He also claims she would wake up at odd hours, throw bed sheets and pillows, and pressure him to drink and smoke. After a few years of marriage, the respondent allegedly left the matrimonial home without reason, took household articles, and they have been living separately for about 2 1/2 years.

7. The petitioner further alleges that after the respondent and her father relocated to Kovilpatti, she filed a maintenance claim in M.C.No. 11/2001, which was later not pressed, due to a compromise, on 07.09.2001. Thereafter, the respondent resumed living with the petitioner but continued to mistreat him. The petitioner arranged treatment for her at Sneha Hospital, but she did not cooperate. He claims she would accompany him to his real estate business, suspecting his fidelity. In June 2010, the respondent allegedly poured water on the petitioner while he was watching TV, shocking him. She also reportedly pressured him to cut ties with his family, leading to quarrels. Unable to endure the cruelty, the petitioner sent a legal notice on 11.02.2011, which the respondent



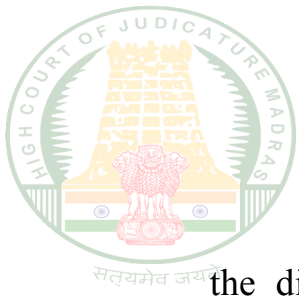
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received on 12.02.2011, but did not respond to or comply with, prompting him to file the divorce petition.

8. The respondent/wife vehemently denies the allegations of cruelty, instead accusing the petitioner of treating her cruelly. She claims he infrequently visited their home, failed to provide necessities, and harassed her until she was forced to leave the matrimonial home. The respondent alleges that she filed the maintenance case in M.C.No. 11/2011, due to the petitioner's actions and withdrew it only after he undertook to cease harassment and live with her peacefully.

9. The respondent further alleges that she was a caring and affectionate wife, but the petitioner subjected her to physical and mental cruelty. She claims he neglected their son and had an illicit affair with Hepziba residing at Humas Street, Nazareth, staying at her house for extended periods. Despite warnings from family and relatives, the petitioner continued the relationship. The respondent expresses willingness to reconcile for the child's sake. She also alleges that she sent a reply notice on 28.02.2011, after receiving the petitioner's legal notice, which the petitioner deliberately concealed. The respondent contends that



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the divorce petition lacks valid grounds and was filed with ulterior motives, warranting dismissal.

10. The petitioner filed a reply statement denying the alleged illicit affairs with Selvi Hepziba and stated that the respondent is making baseless allegations with malafide intention of defaming the petitioner and that the petitioner is living away from the respondent only because of the cruelty committed by the respondent.

11. The points for consideration are;

(1) Whether the learned trial Judge erred in dismissing the divorce petition despite the petitioner's pleading and proof that the respondent's alleged cruelty caused a reasonable apprehension in the petitioner's mind that living with the respondent would be harmful or injurious?

(2) Whether the petitioner/husband has proved the ground of cruelty as alleged by him?

(3) Whether the appeal is liable to be allowed?

Points 1 to 3:

12. As already pointed out, the petitioner has claimed divorce on twin grounds – adultery and cruelty. The learned trial Judge has



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specifically observed that the petitioner has not proved anything about the adulterous conduct of the respondent, but on the other hand, he admitted his illicit affairs with another lady. The learned Counsel for the petitioner/husband at the very beginning of the arguments would submit that they are only pressing the ground of cruelty.

13. Section 10(1)(x) of the Divorce Act allows a spouse to petition for divorce if the other spouse has treated them with cruelty, causing a reasonable apprehension that it would be harmful or injurious to live with them. This means the cruelty must be severe enough to make it unsafe or damaging for the petitioner to continue living with the respondent. Before entering into further, it is necessary to refer the decisions relied on by the learned Counsel for the petitioner/husband. In the case of *Samar Ghosh Vs. Jaya Ghosh* reported in (2007) 4SCC 511, the Hon'ble Apex Court has listed out some instances of human behaviour, which may be relevant in dealing with the cases of 'mental cruelty'.

“(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not



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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



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conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much 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.



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

(xiv) *Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”*

14. The learned Counsel would also rely on the decision of the Hon'ble Supreme Court in ***V.Bhagat Vs. D.Bhagat (Mrs)*** reported in ***(1994)1 SCC 337***, wherein the Hon'ble Supreme Court has dealt with the mental cruelty under Section 13(1)(1-a) of Hindu Marriage Act and the relevant passage is extracted hereunder:

“16. Mental cruelty in [Section 13\(1\)\(i-a\)](#) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to



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put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be Determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”

15. The petitioner has raised flimsy grounds for divorce, as rightly contended by the learned counsel for the respondent. Notably, the petitioner claims the respondent left the matrimonial home without cause, and they lived separately for 2 1/2 years, but fails to specify the exact date or month of her departure. The marriage took place on 12.04.1999. Both parties acknowledge the respondent's maintenance claim in M.C.No.11/2001 was withdrawn on 07.09.2001 after a compromise, following which they resumed cohabitation.



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16. As rightly contended by the learned Counsel for the respondent, since the petitioner himself has admitted that he entered into a compromise with the respondent and started living together from September 2001, it can be easily inferred that the allegations or charges levelled by the petitioner against the respondent, even assuming they are true, were condoned by the petitioner. The petitioner alleges continued ill-treatment after resuming cohabitation, including a specific incident in June 2010 where the respondent poured a pot of water on him while he watched TV and compelled him to take her along for real estate business, suspecting his fidelity. However, these allegations are specifically denied by the respondent. During cross-examination, the petitioner stated that the respondent had accompanied him 5 or 6 times for seeing lands, but she never accompanied him to the Sub-Registrar's office. The petitioner's side further suggested during the cross-examination of R.W.1 that the respondent had quarrelled with the petitioner suspecting his fidelity when female customers came for stitching clothes, threw articles at him causing cruelty, attempted to kill him by pressing pillows and bed sheets, and poured pot water because he visited their brothers and sisters living in the same compound.



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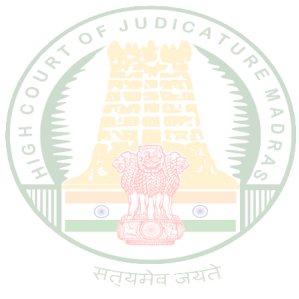
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17. As rightly pointed out by the learned counsel for the respondent, the allegations forming part of the suggestions do not appear in the divorce petition or the petitioner's chief examination evidence. The petitioner's claims of the respondent throwing household articles, murmuring at odd hours, throwing bed sheets and pillows, and compelling him to drink or smoke are unsupported by evidence beyond his testimony. Notably, the petitioner did not examine his parents, siblings, or neighbors to corroborate these allegations.

18. As already pointed out, the respondent in the counter statement has specifically alleged that the petitioner is having illicit affairs with one Hepziba. Though the petitioner has denied the same, in the reply statement and in his chief examination and in the initial part of the cross-examination, subsequently he would admit the affairs with the said lady.

It is necessary to refer the relevant portion hereunder:

“ ுமற்படி ஷெற்பசிபா என்ற பெண்ணை எனக்கு தெரிவும் எனவும் அவருக்கும் எனக்கும் ஜே!வின் சாமுவல் என்ற பெயரில் ஒரு மகன் ரூக்கிறார் என்றால் சரிதான். என்னிடம் காண்பிக்கப்படும் பிறப்பு சான்றிதழ் ுமற்படி ஜே!வின் சாமுவலின் பிறப்பு சான்றிதழ்



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என்றால் சரிதான். அந்த பிறப்பு சான்றிதழ் ஜேராக்! நகல் எ.ம.சா.ஆ.1 சாட்சியிடம் ஸ்ரீமதி ஹெப்சிபா என்ற பெண்ணுக்கும் சாட்சிக்கும் ஒரு குழந்தை பிறந்து ரூபபதாக ஓப்புக்கொள்ளும்பாது ஸ்ரீமதி ஹெப்சிபா என்ற பெண்ணை யார் என்ற தெரியாது எனவும் அந்த பெயரில் அந்த தேருவில் யாரும் லேலை என எப்படி பதில் அளித்தார் என்று ஸ்ரீமதி நீதிமன்ற ஸ்ரீமதிக்கு சாட்சி பதில் அளிக்காமல் மௌனமாக ரூக்கிறார். சாட்சி ஸ்ரீமதி அதுபால் சொன்னது தவறு என்று பதிலளிக்கிறார். ஸ்ரீமதி ஹெப்சிபா என்பவர் ஸ்ரீமதி நபரை திருமணம் செய்யவில்லை என்றால் சரிதான். நான் ஹெப்சிபா என்ற பெண்ணையும் குழந்தையையும் நான் தான் பராமரித்து வருகிறேன்.”

19. It is evident from Ex.R.1 that Jeswin Samuel was born on 25.01.2013 for the couple M.Robinson Ramesh and R.Selvi Hepziba. No doubt, the petitioner in cross-examination would say that he attempted for reunion, but the respondent has not considered for the same and that is why he was forced to issue notice and file the case. The petitioner has neither pleaded anything nor summoned anyone to prove the alleged mediatory talks.

20. Based on the evidence on record, it is clear that the petitioner



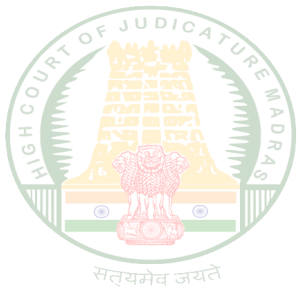
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has filed the divorce petition, citing flimsy reasons, potentially driven by his extramarital relationship. The allegations levelled by the petitioner cannot be construed to mean that the respondent treated him with cruelty, nor were they severe enough to render it unsafe for him to live with her.

21. The learned Counsel for the petitioner would submit that both parties are living separately for more than two years prior to the filing of the petition and as of now, they are living separately for nearly 15 years, which would only reveal that there cannot be any more possibility of reunion and that therefore, the marriage has become irretrievably broken down.

22. At this juncture it is necessary to refer the judgment of the Hon'ble Supreme Court in *the case of K.Srinivas Vs. K.Sunita* reported in **2014 (3) MWN (Civil) 671**, wherein the Hon'ble Apex Court has specifically held that power to grant divorce on the ground of irretrievable breakdown of marriage is only available with the Apex Court and the said power is not available to any other Court of law and the relevant passage is extracted hereunder :



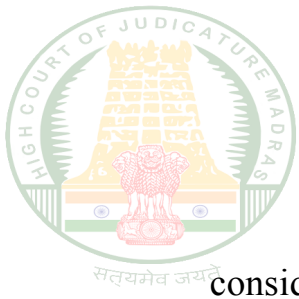
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“3. Irretrievable breakdown of marriage as a ground for divorce has not found statutory acceptance till date. Under [Article 142](#) of the Constitution, the Supreme Court has plenary powers “to pass such decree or make such order as is necessary for doing complete justice in any case or order pending before it”. This power, however, has not been bestowed by our Constitution on any other Court. It is for these reasons that we have confined arguments only to the aspect of whether the filing of a false criminal complaint sufficiently proves matrimonial cruelty as would entitle the injured party to claim dissolution of marriage. It will be relevant to mention that the Law Commission of India in its Reports in 1978 as well as in 2009 has recommended the introduction of irretrievable breakdown of marriage as a ground for dissolution of marriage; the Marriage Laws (Amendment) Bill of 2013 incorporating the ground has even received the assent of the Rajya Sabha. It is, however, highly debatable whether, in the Indian situation, where there is rampant oppression of women, such a ground would at all be expedient. But that controversy will be considered by the Lok Sabha.”

23. Given the circumstances, where the marriage was solemnized in 2009 and the couple has been living separately since 2011, and



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considering the petitioner's failure to establish serious allegations of physical or mental cruelty, this Court concurs with the decision of the learned trial Judge to reject the divorce plea. The findings of the learned District Judge are well-reasoned, and there is no ground for interference. Consequently, this Civil Miscellaneous Appeal lacks merit and is liable to be dismissed. Furthermore, considering the circumstances, it is appropriate to impose costs on the appellant/petitioner.

24. In the result, the Civil Miscellaneous Appeal is dismissed with costs, confirming the order passed in I.D.O.P.No.54 of 2011, dated 12.01.2017, on the file of the Principal District Court, Thoothukudi,

29.08.2025

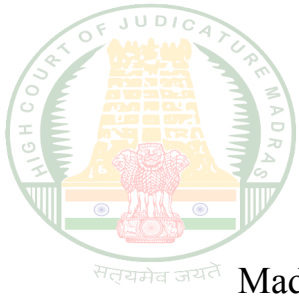
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To

1.The Principal District Court, Thoothukudi.

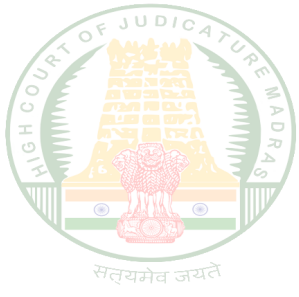
2.The Record Keeper,
Vernacular Section,



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Madurai Bench of Madras High Court, Madurai.

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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

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