



C.M.A.(MD)No.19 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.08.2026

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MRS.JUSTICE M.D.SUMATHI**

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S.Jayalakshmi

... Appellant

Vs.

G.Saravanan

... Respondent

Prayer : Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984 r/w. Section 28 of the Hindu Marriage Act, 1955, to set aside the order and decree made in H.M.O.P.No.131 of 2018, dated 04.01.2020 on the file of the Family Court, Virudhunagar at Srivilliputtur.

For Appellant : Mr.K.Mohandas
for Mr.M.Thirunavukkarasu

For Respondent : No appearance



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JUDGMENT
(By G.R.SWAMINATHAN, J.)

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This civil miscellaneous appeal is directed against the order dated 04.01.2020 passed by the Family Court, Virudhunagar District at Srivilliputhur in HMOP No.131 of 2018.

2.The petitioner in the HMOP is the appellant before us. The appellant sought dissolution of her marriage with the respondent herein on the ground of desertion. The Court below dismissed the HMOP by the impugned order.

3.Though the respondent has been served and his name is printed in the cause list, he has not chosen to enter appearance either in person or through counsel.

4.The case of the appellant is as follows:-

The marriage between the appellant and the respondent was solemnized on 20.05.2005 as per Hindu rites and customs at Srivilliputhur Andal Temple. Two children were born through the wedlock. The respondent was addicted to vices such as drinking and



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gambling. The respondent was physically and mentally harassing the appellant. Unable to bear the mental harassment, the appellant herein left the matrimonial home and returned to her house of birth. The appellant was maintaining herself and her children with the pension received by her father, who is an ex-serviceman. The respondent did not bother to visit the appellant or the children. Nor did he contribute a single pie towards their maintenance. The respondent would come home in an inebriated condition and abuse the appellant and the children. He would even wish that they died. The appellant lodged complaint before the All Women Police Station on 04.07.2017. It was followed by yet another complaint on 04.10.2018. The appellant also issued a legal notice on 17.10.2018. The parties were living separately from each other and the respondent had no intention to sustain the marriage. Hence, the appellant filed H.M.O.P.No.131 of 2018 seeking dissolution of the marriage.

5.The respondent entered appearance before the Court below but he did not choose to file any counter. He also did not participate in the proceedings. He was set *ex parte*. The appellant examined herself as P.W.1 and Exs.P1 to P3 were marked. The Court below, however, came to the conclusion that the appellant did not prove her case and dismissed the HMOP.



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6.The question that calls for consideration is whether the Court below was justified in dismissing the HMOP even though the appellant's testimony was not controverted and whether the appellant had made out a case for grant of divorce.

7.It is true that merely because the respondent remained *ex parte*, the matrimonial Court should not mechanically grant relief. Section 23(1) of the Hindu Marriage Act, 1955 makes it clear. Whether the proceedings are defended or not, the court must be satisfied that ground for granting relief exists. The legal burden is upon the petitioning spouse to satisfy the court. In ***Lachman Utamchand Kirpalani v. Meena @ Mota (1963 SCC Online SC 32)***, it was held that the burden of proving desertion is on the petitioner and that he or she has to establish beyond reasonable doubt to the satisfaction of the court that the desertion throughout the entire period of two years before the petition as well as that such desertion was without just cause. This standard of proof laid down by the majority Judges was endorsed by the dissenting Judge also (Justice K.Subba Rao). In fact, the Five Judges Bench merely reiterated the principle laid down in ***Bipinchandra Jaisinghbai Shah v. Prabhavati (1956) 2 SCC 382***. The grounds such as cruelty, adultery,



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desertion etc., were treated as matrimonial offences. Probably that was why, a higher standard of proof was expected. But in **Dr.N.G.Dastane v. S.Dastane (1975) 2 SCC 326**, it was held that the word “satisfied” occurring in Section 23 of the HMA, 1955 must mean “satisfied on a preponderance of probabilities” and not “satisfied beyond a reasonable doubt”. Section 23 does not alter the standard of proof in civil cases. **Mulla on Hindu Law** refers to both the decisions. But we are unable to read them together without blinking. **Dastane** neatly skips any reference to **Lachman**. All the subsequent decisions including **Roopa Soni v. Kamalnarayan Soni (2023) 16 SCC 615** pay homage to **Lachman**. But only for the exposition regarding the concept of desertion. We understand why. The first two decisions of the Hon'ble Supreme Court toed the English line. **Blyth v. Blyth (1966) 1 All ER 534** bucked the trend and broke new ground. The British Courts themselves abandoned the standard of proof beyond reasonable doubt in matrimonial proceedings. That was why, Dastane chose to tread the new path. It is interesting to note that the Calcutta High Court in **Sachindranath Chatterjee v. SM.Nilima Chatterjee (1969 SCC OnLine Cal 39)** took note of the change in the English thought process but felt that they cannot cross the *laxman rekha* laid down in **Lachman**. What strikes us is that a judgment rendered by a High Court in 1969



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took note of the march of law in England. That speaks for the scholarship of the Bar and the Bench of Calcutta.

8.The appellant examined herself as PW.1. She narrated the acts of cruelty perpetrated on her by the respondent herein. Her testimony was not questioned. It is also relevant to note that the petition averments were not controverted by the respondent by filing a counter. It is settled law that if the testimony of a witness on a particular point is not challenged, it is to be admitted and where the other side leads no evidence, the burden of proof is discharged by even leading a slight evidence (**J.K Batteries v. Parasmal Jain And Another**, 2014 SCC Online MP 6917 per **Alok Aradhe J (As His Lordship Then Was)**). An uncontroverted and uncontested testimony of the witness has to be taken as it is. The Court below ought to have taken the testimony of the appellant at its face value and found out if it makes out a case for grant of relief.

9.The appellant had clearly stated that for over three and half years prior to filing of the petition, she was living separately along with the child. This fulfilled the two year requirement rule. Whether it amounted to desertion or not was a point for determination. The



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expression “desertion” has been defined in the statute itself as including willful neglect. The respondent had not been maintaining the appellant and the child. The appellant had testified that because of the cruel conduct of the husband, she had to leave the matrimonial home and return to her parents house. This undoubtedly constitutes constructive desertion on the part of the husband. We fail to understand what more the wife was expected to state.

10.We cannot lose sight of the ground realities. Marriage continues to be revered as a sacred institution. Family is still the fundamental unit of the Indian society. Though filing of divorce petitions is on the rise, one can safely conclude that a married women will not take the first step of snapping the marital tie unless there are compelling circumstances. Where the wife is the petitioner seeking dissolution of marriage, her testimony should not be viewed with suspicion. When her testimony is unchallenged, courts would be committing a grave error if they insist on corroboration.

11.It is true that the appellant's petition was filed under Section 13(1)(i-b) of HMA, 1955. The court below concluded that the appellant did not establish her allegation that the respondent herein had deserted



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her. One can be held guilty of desertion only if evidence indicates that he wants to put an end to marriage. One can arrive at this inference both positively and negatively also. It is not that the other party must explicitly declare that he wants to terminate the matrimonial relationship. Not necessarily. By sheer indifference and by not fulfilling the matrimonial obligations, one's intent can be deciphered.

12.Let us come to the case on hand. The parties have been remaining separate since 2015. The respondent has not taken care of the appellant and the children. He did not oppose the divorce petition. He remained exparte both before the court below and here. Nothing more is required to prove that the respondent is not all interested in continuing the marital relationship.

13.Even if the plea of desertion is negated, the appellant ought to be granted relief of on the ground of cruelty. The appellant had alleged that the respondent was addicted to alcohol. The acts attributed to the respondent clearly constitute cruelty. Merely because the appellant sought relief on the ground of desertion, that need not have dissuaded the court below from having a holistic look at the factual matrix. Section 23 of the Act talks about the satisfaction of the Court



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with regard to the existence of any of the grounds for granting relief.

The court must look at the entire record and not go by the provision under which the petition has been filed. In the context of administrative law, it is held that an order will not be set aside on the ground of misquoting or non-quoting the correct provision of law. What the writ court will see is whether the authority has the jurisdiction to pass the order. The same approach has to be adopted in matrimonial proceedings also. Therefore, the filing of the petition under Section 13(1)(i-b) of the Act need not come in the way of granting relief on the ground of cruelty if it is made out. In the case on hand, the ground of cruelty has also been established.

14.We are satisfied that the grounds for granting divorce exist. The appellant is not guilty of any wrong. She has not condoned the misconduct committed by the respondent. There is also no unnecessary or improper delay in instituting the petition. There is no legal impediment for granting the relief sought for.

15.Before we conclude, we need to make an important observation. Along with the petition, as many as 18 documents have been filed. But only 3 inconsequential documents were marked. The



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complaints made to the police, the legal notices exchanged between the parties etc., were not marked at all. Probably that was why, the trial Judge remarked that the allegations have not been proved. In the grounds of appeal, it has been contended that the trial Judge had directed the appellant to mark only three documents at the time of giving evidence because the respondent had already been set ex parte. It would not be fair on our part to give a finding on this allegation. We would expect the Bar to be firm and fearless in the discharge of their professional duties. The lawyer will prosecute or defend in the manner he deems fit and which he thinks is in the best of interests of his client. The presiding officer shall not dictate as to how the counsel is to get along. The presiding officer cannot restrict the number of documents that may be marked. No litigant can be dissuaded from adducing evidence which is legally admissible. If this right of the counsel or the litigant is sought to be curtailed, a contemporaneous record shall be created by the counsel concerned. It can be in the form of a memo or a communication to the Registry of the High Court.

16.The court below had been quite uncharitable towards the appellant. The appellant had termed the respondent as psychotic. But the appellant had also stated that the respondent is earning a good sum



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every month by dealing in high breed dogs. To the trial Judge, these two statements do not go together. We are of the view that the appellant could not have been disbelieved for this reason. One can be successful in one's career and at the same time be vengeful towards one's life-partner.

17.The order of the Court below is set aside and this civil miscellaneous appeal is allowed. The marriage between the appellant and the respondent solemnized on 20.05.2005 as per Hindu rites and customs at Srivilliputhur Andal Temple stands dissolved. No costs.

(G.R.S. J.,) & (M.D.S. J.,)
11.08.2026

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:

The Family Court,
Virudhunagar,
At Srivilliputtur.

Copy to:

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



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and
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