

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.07.2017

PRONOUNCED ON : 06-09-2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

Civil Miscellaneous Appeal No. 1364 and 1365 of 2017

Dr. Manimaran ... Appellant in both the appeals

Versus

Dr. Nalini ... Respondent in both the appeals

CMA No. 1364 of 2017:- Appeal filed under Section 19 of the Family Courts Act, 1984 against the Order and Decree dated 04.03.2017 made in OP No. 2804 of 2012 on the file of II Additional Principal Family Court, Chennai.

CMA No. 1365 of 2017:- Appeal filed under Section 19 of the Family Courts Act, 1984 against the Order and Decree dated 04.03.2017 made in OP No. 3964 of 2012 on the file of II Additional Principal Family Court, Chennai.

For Appellant : Mr. R. Shanmugasundaram, Senior Advocate
for Mr. K. Sakthivel
in both the appeals

For Respondent : Ms. Babitha Sunil
in both the appeals

COMMON JUDGMENT

R. SUBBIAH, J

Both these appeals arise out of a common Order dated 04.03.2017 passed by the learned II Additional Principal Judge, Chennai in OP Nos. 2804 of 2012 and 3964 of 2012. By the said Order dated 04.03.2017, the Family Court dismissed OP No. 2804 of 2012 filed by the husband/appellant under Section 13 (1) (i-a) of The Hindu Marriage Act for dissolution of the marriage, while allowing the OP No. 3964 of 2012 filed by the wife/respondent herein under Section 9 of the said Act for restitution of conjugal rights. Therefore, both these appeals are taken up together and are disposed of by this common judgment.

2. For the sake of convenience, the parties shall be referred to as appellant and respondent as per their litigative status in this appeal.

3. The case of the appellant, as could be unfolded from the averments made in OP No. 2804 of 2012 filed by him under Section 13 (1) (i-a) of The Hindu Marriage Act, is that when the appellant and the respondent were pursuing their Medical Degree in Chengalpet Medical College in the year 1997, they were in love with each other. Subsequently, the appellant and the respondent got married on 03.06.1999 and it was registered in the office of the Sub-Registrar, Perambur. Thereafter, the appellant wanted to perform a formal marriage in the presence of his parents, but the respondent disagreed and got agitated by stating that the parents of the appellant could not do anything as the marriage has already taken place. However, the appellant convinced the respondent and a formal marriage was performed on 28.11.1999. According to the appellant, after the marriage, the matrimonial home was set up at No.30, Malayan Street, Tenkasi. In the year 1999, the appellant got appointed to Government Medical Service and was posted in Tenkasi Primary Health Centre where the respondent also started her medical practice. On 03.11.2000, the respondent gave birth to a male child named Aswin Karthik. Prior to the birth of the child and also after birth, the respondent stayed with her parents in Ranipettai, Vellore District and this separation for about 8 months, according to the appellant, has widened the relationship between the appellant and the respondent. After the respondent returned to the matrimonial home, the appellant expressed his intention to continue his higher studies and to prepare for competitive examination after his regular working hours. Though appellant was earning out of his employment in government service, the respondent wanted him to concentrate in private practice ignoring his higher studies and thereby the respondent wanted to

make huge money. Such attitude of the respondent, according to the appellant, was not to his liking. In fact, the respondent discouraged the appellant from pursuing his higher studies and also used abusive words about his earning capacity. Such an attitude on the part of the respondent has resulted in loss of mental peace and resultantly, the appellant could not succeed in the competitive examination held during the year 2002. In such a situation, the appellant had taken leave from his employment, kept himself away from the respondent and prepared for the competitive examination and ultimately he succeeded in securing 19th rank in the examination and got selected in the year 2003.

4. According to the appellant, prior to his succeeding in the competitive examination during 2003, in the year 2001, when he was posted at Tuticorin Medical Hospital for 7 months, he stayed in his home town at Tenkasi and attended to his work in Tuticorin. At that time, the respondent expressed her wish to start a Polyclinic in Tirunelveli Town in association with other Doctors. In this context, the father of the appellant gave him Rs.3,00,000/- and the respondent also contributed Rs.1,00,000/- by obtaining loan from her father. Even though a Polyclinic was started, it could not be run beyond one year and the appellant could not earn any profit. Thus, the entire investment made by the appellant was lost. Therefore, the appellant returned to Tenkasi and attended to his regular employment. At this stage, the respondent started pressurising the appellant to repay the amount of Rs.1,00,000/- paid by her and when the appellant replied that he has no other income except the salary received through his employment in Government service, the respondent quarrelled with the appellant and abused him for not paying back the sum of Rs.1,00,000/- received from her. This according to the appellant, has caused him mental agony and therefore, with great difficulty, the appellant repaid the amount to the respondent. Even after repayment, the respondent subjected the appellant to mental cruelty and physical discomfort in all forms and manifestations. Further, the respondent did not allow the appellant to touch his child for the reason that he was not making any extra money by engaging himself in private practice. Further, under one pretext or the other, the respondent did not allow the appellant to touch the child and also did not permit the parents of the appellant to stay in the matrimonial home even for few days.

5. According to the appellant, in the year 2003, he shifted his matrimonial home to Chennai and stayed in a rented house at Purasawalkam. It is further contended that since 2005, there was no conjugal relationship between the appellant and the respondent owing to the adamant attitude of the respondent. The appellant has taken several efforts to renew the conjugal relationship but it was refused by the respondent. Thus, the

appellant was unreasonably denied the physical relationship with the respondent and this has added to his mental agony and peacelessness in the matrimonial life. According to the appellant, during the year 2005, he got employment at Madras Medical College, Chennai and during the course of such employment, the respondent harped upon him to earn extra money by engaging himself in private practice. According to the appellant, the nature of his work demands that he has to attend his work from 9.30 am in the morning and return late in the night at 10.00 p.m. However, the respondent insisted him to come early from his employment and to attend private practice to earn extra money. Such an attitude on the part of the respondent has totally ruined the matrimonial relationship. While so, during the year 2006, the respondent left the matrimonial company of the appellant and stayed with her parents along with the minor son. The appellant has made several attempts to bring the respondent back to the matrimonial home, but such attempts failed. The appellant therefore filed the Original Petition seeking for dissolution of divorce.

6. The respondent contested the Original Petition filed by the appellant by filing a detailed counter affidavit. It is her contention that she married the appellant on 03.06.1999 and it was registered in the office of the Sub-Registrar, Perambur at her instance. Further, it is the respondent who has requested for performing a formal marriage and at no point of time she has prevented the appellant or his parents to attend such a formal marriage. It is further stated that for performance of the formal marriage on 28.11.1999, as demanded by the appellant, the parents of the respondent have borne the entire marriage expenses besides they have offered gold jewels weighing 125 sovereigns and a brand new Maruti 800 Car. While admitting the factum of setting up the matrimonial home and the birth of the male child on 03.11.2000, the respondent would contend that she was constrained to remain at her parents house as the new born boy was underweight and suffered from Jaundice. This was also known to the appellant and he also visited the minor child at the parents house of the respondent at Vellore at frequent intervals. While so, the period during which the respondent stayed at her parents cannot be said to have widened the matrimonial relationship between the appellant and the respondent. The respondent denied as false the allegation that she pressurised the appellant to engage in private practice and discouraged him to take up the competitive examinations. On the other hand, the respondent always extended her fullest cooperation for the appellant to prepare for the examinations. Even though the appellant failed in his first attempt, it was due to the support and encouragement given by the respondent, he has secured 19th rank in the examinations held in the year 2003. As regards the averment that the respondent had abused the

appellant for non-payment of the sum of Rs.1,00,000/- paid by her for starting a polyclinic, the respondent, in her counter affidavit, has stated that at no point of time did she pressurise the appellant for repayment of the amount and it was nothing but a falsehood. In fact, when the newly started Polyclinic did not result in earning profit, it was the respondent who stood by the side of the appellant and attempted to tide over the crisis confronted by the appellant. Further, the parents of the respondent also unconditionally supported the appellant and the respondent financially as and when required. The respondent was never interested in earning more money and she only discharged her duties as a caring wife towards the appellant and a loving mother towards the minor child. The respondent also denied as false that she refused conjugal bliss to the appellant since 2004. During the year 2005, the respondent was employed in a Private Hospital and the appellant was working in Madras Medical College. The respondent has been supporting the appellant, both morally and financially while so, it is a total falsehood to contend that the respondent did not discharge her matrimonial obligation as a dutiful wife. The appellant and the respondent have been peacefully living with whatever financial resources made available and led a simple life. While so, the averment that the respondent insisted the appellant to bring more money by engaging himself in private practice is nothing but a falsehood. According to the respondent, she was totally upset and shocked on receipt of the notice in the Original Petition filed by the appellant for dissolution of the marriage. It is her contention that atleast for the sake of the minor son, who is 12 years old at the time of the filing of Original Petition by the respondent, they have to live together and dissolution of the marriage is unwarranted. It is further submitted that all the efforts made by the respondent to change the attitude and behaviour of the appellant went futile. According to the respondent, when she received the notice on 07.08.2012 in the Original Petition filed by the respondent, she confronted the appellant for having filed the Original Petition. The respondent also, out of fear of losing her husband and family, preferred a complaint against the appellant before the All Women Police Station, Vepery on 08.08.2012, which was forwarded to the All Women Police Station, Ayanavaram for want of jurisdiction on 17.08.2012. Such complaint was preferred by her without knowing any other alternative way for reunion with the appellant. The misunderstanding and dispute between the appellant and the respondent is trivial and it can be resolved through mutual discussion. The respondent is hopefully awaiting for the appellant to come back to live with her and their 12 year old son to save the divine institution of marriage. The respondent therefore prayed for dismissal of the Original Petition.

7. After receipt of the notice in OP No. 2804 of 2012 filed by the appellant for dissolution of the marriage, the respondent has filed OP No. 3964 of 2012 under Section 9 of the Hindu Marriage Act, 1955 for restitution of conjugal rights. The averments made in the counter affidavit of the respondent in OP No. 2804 of 2012 have been reiterated and affirmed in OP No. 3964 of 2012 filed by her. That apart, it is contended by the respondent in OP No. 3964 of 2012 that during all these years, the respondent discharged her matrimonial obligations as a dutiful wife. In fact, when the parents of the appellant were hospitalised in the hospital where she was working, as a dutiful and caring daughter-in-law, she had looked after them very well. It is further stated that the appellant and the respondent were living happily without any monetary constraints. However, during December 2011, the behaviour of the appellant changed and he returned home during late hours. According to the respondent, she was under the impression that the nature of the work demands the appellant to remain in the hospital during late hours and his professional nature of work is the reason for his returning home at odd hours. However, the respondent came to know that the appellant is having extra marital relationship with another woman. In fact, on 26.12.2011, when the respondent confronted the appellant about his affairs with another woman, he openly confessed that he was having illicit relationship with another woman, whom he has been regularly seeing and because of which he did not come back home regularly. Even though the respondent was shattered on hearing from the appellant about his illicit relationship with another woman, she patiently waited for the appellant to change his behaviour. The respondent also made several attempts through her various friends and well wishers to bring good sense and change in the behavioural pattern of the appellant, but they went futile. While so, after receipt of the notice from the Court, fearing that she may lose her husband as well as her matrimonial life, she preferred a complaint before the All Women Police Station Vepery on 08.08.2012, which was forwarded to All Women Police Station, Ayanavaram, only to ensure that the appellant join her in the matrimonial home and the complaint was not preferred with any other ill intention. While so, on and from 22.08.2012, the appellant left her and the minor child in the lurch and was staying away from them. In such situation, the respondent has filed the Petition seeking restitution of conjugal rights.

8. The appellant has filed his detailed counter affidavit in the petition filed by the respondent for restitution of conjugal rights. In the counter affidavit of the appellant, while reiterating the averments made in the Petition filed by him for dissolution of the marriage, he has stated inter alia that he never stayed out without returning home except on few days when his work warranted his stay in the hospital. The

appellant denied the allegation that the respondent saw him in the company of another woman in a car. According to the appellant, he never confessed to the respondent on 26.12.2011 that he is having illicit relationship with another woman. It is further stated that it is unfair to term his acquaintance with his co-employees working in the hospital as an extra marital relationship. As regards the complaint dated 08.08.2012 given by the respondent before the All Women Police Station, Vepery, it is stated that the statement made by the respondent in the said complaint is absolutely false and motivated. In the complaint, it was falsely stated that when the respondent asked the appellant about his illicit relationship with another woman, the appellant attempted to kill her by pushing her out of the moving car and intimidated her several times. It was further stated that in the complaint that the appellant used to often consume alcohol and watch obscene movies in the presence of his son. According to the appellant, such a complaint given by the respondent against him has caused him acute mental pressure, harassment and physical discomfort. Further, on the basis of the complaint dated 08.08.2012, the appellant and a female employee working with him were called to the police station and they were enquired for about three hours. On completion of the enquiry, it was concluded that the complaint given by the respondent is false. However, apprehending arrest at the hands of the respondent police on the basis of the false complaint given by the respondent, the appellant has filed CrI.OP No. 19568 of 2012 before this Court for Anticipatory Bail which was opposed by the respondent by filing an Intervening Petition. Thus, according to the appellant, by lodging false complaint, the respondent has tarnished his image and reputation and thereby caused mental cruelty. In the complaint, false statement were made against the appellant which has left no scope for reunion between the appellant and the respondent. In such circumstances, he prayed for dismissal of the Original Petition for restitution of conjugal rights.

9. Before the Family Court, the appellant examined himself as PW1 and Exs. P1 to P10 were marked. On the side of the respondent, the respondent examined herself as RW1 and Exs. R1 to R11 were filed. The Family Court, on consideration of the oral and documentary evidence, has concluded that the appellant has not established that he was subjected to cruelty at the instance of the respondent. As regards the complaint given by the respondent before the All Women Police Station, Vepery, it was observed that such complaint was given only after the filing of the Original Petition by the appellant for dissolution of the marriage and therefore, the same would not be a ground to hold that the appellant was subjected to matrimonial cruelty. Accordingly, the Family Court dismissed the Original Petition filed by the appellant for dissolution of marriage and allowed

the Original Petition filed by the respondent for restitution of conjugal rights.

10. Mr. Shanmuga Sundaram, learned Senior counsel appearing for the appellant would vehemently contend that the marriage between the appellant and the respondent was solemnised on 03.06.1999 and it was registered in the office of the Sub-Registrar, Perambur. Thereafter, a formal marriage was performed between the appellant and the respondent on 28.11.1999. Due to the wedlock, a male child named as Ashwin Karthick was born on 03.11.2000. According to the learned Senior counsel for the appellant, the respondent wife was only interested in the appellant earning more money and therefore, she nagged him to engage himself in private practice repeatedly, which he refused. In this context, there were quarrel between the appellant and the respondent. Further, the respondent refused conjugal bliss to the appellant without any justifiable cause. All these facts have been clearly spoken to by the appellant, as PW1, before the Family Court.

11. Above all, according to the learned Senior counsel for the appellant, soon after receipt of the notice in the Original Petition filed by the appellant for dissolution of the marriage, the respondent preferred a Complaint dated 08.08.2012 before the All Women Police Station, Vepery. For want of jurisdiction, the said complaint was forwarded to the All Women Police Station, Ayanavaram on 17.08.2012. In the said the complaint, false statements were made by the respondent by which the appellant was subjected to acute mental cruelty. The complaint dated 08.08.2012 given by the respondent before the All Women Police Station, Vepery was marked as Ex.P4 by the appellant. In the said complaint, the respondent went to the extent of saying that the appellant attempted to kill her by pushing her from a moving car. It was further complained that the appellant often consumes alcohol and used to see obscene movies in the presence of the minor son. It was further complained that the appellant used to physically assault her by throttling her neck. It was also complained that she was constrained to receive the notice in the Original Petition as she was threatened by the appellant by saying that if she did not receive the notice, he will kill her. According to the learned Senior Counsel for the appellant, these statements made by the respondent in the complaint has remained unsubstantiated besides that it was found to be false during the course of trial before the Family Court. By pointing out the cross-examination of the respondent, as RW1, the learned Senior counsel for the appellant would contend that during the course of cross-examination, it was admitted by the respondent that neither the said complaint was written by her nor the averments contained therein were instructed by her. The respondent admitted that she has only signed the complaint. She

has further admitted that the complaint was given only by her father and uncle and she merely signed it. It was also admitted by the respondent that she does not know the contents of the complaint, Ex.P4, signed by her. On the other hand, when the respondent filed Crl.OP No. 19568 of 2012 for Anticipatory Bail, it was opposed by the respondent by filing an Intervening Petition. Thus, according to the learned Senior counsel for the appellant, the respondent, in the complaint under Ex.P4, has made mudslinging allegations against the appellant as if he used to consume alcohol and view obscene films in the presence of the minor son. The appellant was also subjected to enquiry by the police authorities for a brief duration which has tarnished his image. According to the learned Senior counsel for the appellant, even though the complaint, Ex.P4 has emanated subsequent to the filing of the Original Petition by the appellant, the statements made in the complaint, if read as a whole, would only indicate that the appellant was subjected to matrimonial cruelty as he was falsely subjected to enquiry in the Police Station on the basis of a false complaint given by the respondent. Further, the nature of the complaint made by the respondent speaks volume about the conduct of the respondent and it is sufficient to grant a decree of divorce. In this context, the learned Senior counsel for the appellant relied on the decision of the Honourable Supreme Court in (Raj Talreja vs. Kavita Telraja) reported in 2017 SCC Online SC 462 wherein it was held that even though mere filing of the complaint by husband or the wife against the other will not amount to cruelty, if it is found that the allegations made therein are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty, within the meaning of Hindu Marriage Act, 1955.

12. The learned Senior counsel for the appellant also placed reliance on the decision of the Honourable Supreme Court in the case of (K. Srinivasa vs. K. Sunita) reported in (2014) 16 SCC 34. In that case, the wife has preferred a criminal complaint against the husband and seven members of the husband's family and based on which the husband and family members were arrested and remanded to judicial custody. After trial, the husband and family members were acquitted in the criminal proceedings and the Judgment of acquittal had reached finality. Based on these facts, the Family Court allowed the Petition filed by the husband for divorce. On appeal by the wife, the High Court reversed the order of the Family Court against which the husband has filed a further appeal before the Supreme Court. The Honourable Supreme Court held that the Criminal complaint preferred by the wife was a contrived afterthought and therefore, the High Court ought not to have reversed the order of the Family Court. It was further held

that the respondent/wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the husband and her in-laws and such conduct unquestionably constitutes cruelty as postulated in Section 13 (1) (i-a) of The Hindu Marriage Act.

13. The learned Senior counsel for the appellant has further relied on the decision of the Honourable Supreme Court in (K. Srinivas Rao vs. D.A. Deepa) reported in (2013) 5 SCC 226. In that case, the wife has given a Criminal complaint against the husband and his family members specifically alleging that the mother-in-law has forced her to sleep with her father-in-law. Subsequently, the complaint turned out to be a false and it was stated by the wife that she has given such complaint out of frustration against the husband's refusal to have cohabitation. The Supreme Court held that such a conduct of the wife in giving a complaint and making unfounded, indecent and defamatory allegation against her mother-in-law, filing revision seeking enhancement of the sentence and also filing appeal questioning the judgment of acquittal awarded to the husband and in-laws only indicates that the wife had made all attempts to ensure that the husband and his parents were put in jail and also have the husband removed from his employment, which act of the wife, certainly constitutes matrimonial cruelty.

14. By placing reliance on the above decisions, the learned Senior counsel for the appellant would contend that in the complaint, marked as Ex.P4, the respondent has made disparaging remarks against the appellant, knowing it to be false. The allegations levelled against the appellant in Ex.P4 are serious in nature, it has caused a deep scar and wound in the mind of the appellant and it had caused him mental cruelty. Therefore, the learned Senior counsel for the appellant prayed for setting aside the Order passed by the Family Court, Chennai and to allow the appeals.

15. Per contra, the learned counsel for the respondent would only contend that the matrimonial dispute between the appellant and the respondent is trivial and it can be resolved through mutual dialogue and discussion. It is further submitted that the complaint was given by the respondent when she was in a disturbed state of mind as she has received notice from the Court in the Original Petition filed by the appellant for dissolution of the marriage. In any event, the complaint has emanated subsequent to the filing of the Original Petition by the husband and the same need not be taken note of by this Court. Further, when the respondent intimated her father and paternal uncle about the filing of the Original Petition, in order to ensure that the respondent rejoins the appellant in the matrimonial home, her father and paternal uncle have given the

complaint. The circumstances under which the complaint under Ex.P4 was given by the respondent is also to be taken note of. Out of emotion and fear of losing the appellant and the matrimonial life, the complaint was given by her and therefore, it need not be taken into account. In any event, merely because the respondent has given a complaint against the appellant, it will not be a ground for dissolving the marriage between the appellant and the respondent on the ground of cruelty. In this context, the learned counsel for the respondent relied on the decision of the Honourable Supreme Court in the case of (Suman Singh vs. Sanjay Singh) reported in (2017) 4 SCC 85 wherein it was held that the word 'cruelty' defined in Section 13 (1) (i-a) of the Hindu Marriage Act is not defined under the Act. It was further held that no uniform standard can ever be laid down for guidance, yet it is appropriate to enumerate some instances of human behaviour which may be considered relevant in dealing with the cases of 'mental cruelty'

16. The learned counsel appearing for the respondent, by placing reliance on the above decision, would contend that the cumulative conduct of the parties, taking into account the circumstances, the background with which such acts have been perpetrated against the other, has to be examined to reach a conclusion whether such an act amounts to cruelty. It is necessary that an inference has to be drawn from the facts and circumstances of the case. A feeling of anguish, disappointment and frustration of one spouse caused by the conduct of the other can only be appreciated on assessing the attending facts and circumstances in which the two partners of matrimonial life have been living. According to the counsel for the respondent, in the present case, the circumstances under which the complaint under Ex.P4 has been given by the respondent has to be taken note of. Taking into account the circumstances that compelled the respondent to give the complaint under Ex.P4, the Family Court has rightly concluded that mere filing of the complaint will not be a ground for dissolution of the marriage besides that Ex.P4 has emanated subsequent to the filing of the Original Petition and therefore it cannot be relied on. Further, RW1, in her proof affidavit, has clearly stated that atleast in the interest of the minor male child, re-union of the appellant and the respondent is necessary. The Family Court also taking note of the entire evidence made available on record, has rightly dismissed the Petition filed by the appellant for divorce and allowed the Petition filed by the respondent for restitution of conjugal rights. The learned counsel for the respondent therefore prayed for dismissal of the appeals by confirming the order passed by the Family Court, Chennai.

17. We have considered the rival submission of the counsel for both sides and perused the materials placed on record. At

the outset, it has to be seen whether the appellant has established that he was subjected to matrimonial cruelty at the hands of the respondent. As we have dealt with the facts of the case projected by the appellant and the respondent in their respective Original Petitions in detail, we feel that it is not necessary for us to deal with those factual matrix once again. Suffice it to state that on receipt of the notice from the Family Court in OP No. 2804 of 2012 filed by the appellant, for dissolution of the marriage, the respondent has given the complaint, dated 08.08.2012 before the All Women Police Station, Vepery, marked as Ex.P4. The said complaint was forwarded to All Women Police Station, Ayanavaram on 17.08.2012 for want of jurisdiction. According to the respondent, she has given the said complaint out of fear that she may permanently get separated from her husband and not with any ill intention.

18. It is seen that on the basis of the complaint given by the respondent, the appellant along with a female co-employee was subjected to enquiry. Thereafter, apprehending arrest, the appellant has filed Crl.OP No. 19568 of 2012 for Anticipatory Bail in Crime Number not known of 2012 and it was dismissed on 29.08.2012. Thereafter, the appellant has filed another Petition in Crl.OP No. 7734 of 2013 before this Court for Anticipatory Bail apprehending arrest at the hands of the All Women Police Station, Ayanavaram in connection with the case in Crime No. 1 of 2013. The said case was opposed by the respondent by filing an Intervening Petition in MP No. 1 of 2013. This Court, after hearing both sides, granted Anticipatory Bail to the appellant on 04.12.2013. Therefore, the submission of the respondent that the complaint, under Ex.P4, was given out of a sudden provocation or emotional outburst to save her matrimonial life cannot be countenanced. If really the complaint was given by the respondent under the abovestated circumstances, she ought not to have opposed the Anticipatory Bail Petition filed by the appellant by filing an intervening Petition before this Court. This only shows that the respondent has only intended to ensure that the appellant/husband is put behind bars and also to harass him.

19. Before the Family Court, the appellant has marked the complaint dated 08.08.2012 as Ex.P4. We have perused the contents of the complaint, Ex.P4. In the complaint, it was specifically complained, among other things, that the appellant used to often consume alcohol and watch obscene films in the presence of the minor child. It was also complained that the appellant was seen in the company of another woman and that he is having illicit relationship with her. It was further complained that the appellant used to physically assault her and on one occasion he throttled her neck with an intention to kill her. We find that these averments were not made in the Petition

filed by the respondent for restitution of conjugal rights, which she filed after giving the complaint under Ex.P4. In fact, in the cross-examination of the respondent, she has categorically admitted that it is not correct to state that she was assaulted by the appellant. Therefore, the contention of the counsel for the respondent that Ex.P4 need not be looked into as it has emanated after filing of the Original Petition by the husband cannot be accepted. The fact remains that after giving the complaint under Ex.P4, the respondent has filed the Petition under Section 9 of The Hindu Marriage Act for restitution of conjugal rights. Both the Petitions filed by the appellant and the respondent were taken up for joint hearing by the Family Court and they were disposed of by a common order. In such circumstances, it is futile on the part of the counsel for the respondent to contend that Ex.P4 emanated after filing of Original Petition by the appellant/husband and therefore, the same cannot be taken note of by this Court, has no force.

20. Before the Family Court, the respondent has filed her proof affidavit. Even in the proof affidavit, she has reiterated that the appellant was leading an adulterous life with another woman. The very same allegation was also made in Ex.P4 complaint. Therefore, in order to disprove the accusations levelled in the complaint given by the respondent under Ex.P4, against the appellant, the respondent was subjected to cross-examination at the behest of the appellant. In the cross-examination, she has admitted that the complaint was prepared only by her father and paternal uncle and she merely signed the complaint. It was further deposed in the cross-examination that she has no knowledge about the contents of the complaint under Ex.R4. RW1 has admitted in the cross-examination that the allegation that the appellant attempted to kill her by pushing her from a moving car is not true. It was also stated by RW1 that if the appellant has not filed any Petition for dissolution of the marriage, she would not have given the complaint under Ex.P4. In the cross-examination of RW1, she has further admitted that on the basis of the complaint given by her under Ex.P4, the appellant has filed CrI.OP No. 19568 of 2012 for grant of Anticipatory Bail and it was opposed by her by filing an Intervening Petition before this Court. The respondent has further stated in her cross-examination that she was not aware of the charge sheet filed pursuant to the registration of First Information Report, marked as Ex.P7. The fact remains that on the basis of the complaint given by the respondent, investigation was conducted in Crime No. 1 of 2013 on the file of the Inspector of Police, All Women Police Station, Ayanavaram and after investigation, charge sheet was also filed and it was taken cognisance of by the V Metropolitan Magistrate in C.C. No. 1497 of 2014. The summons issued to the appellant in C.C. No. 1497 of 2014 was also marked as Ex.R10. At

this juncture, it has to be pointed out that the respondent is not an illiterate woman. She is a Doctor by profession. She is not expected to merely sign a complaint prepared by her father and paternal uncle, especially when such complaint pertains to a dispute with her husband/appellant and which will have a great impact in her matrimonial life. Even as admitted by the respondent, most of the contents contained in the complaint given by her are false. When such false complaint has been given by her, it will have the effect of causing irretrievable breakage of the matrimonial journey with the appellant leaving little scope or no scope for reunion with the appellant. Thus, we are of the view that by giving such false complaint against the appellant, the respondent has largely contributed for the breakage of the matrimonial relationship with the appellant besides that such an act of giving false complaint would amount to cruelty as defined under The Hindu Marriage Act. In this context, useful reference can be made to the decision of the Honourable Supreme Court in (K. Srinivas Rao vs. D.A. Deepa) reported in (2013) 5 SCC 226, relied on by the learned Senior counsel for the appellant, wherein it was held as follows:-

"27. We need to now see the effect of the above events. In our opinion, the first instance of mental cruelty is seen in the scurrilous, vulgar and defamatory statement made by the respondent wife in her complaint dated 04.10.1999 addressed to the Superintendent of Police, Women Protection Cell. The statement that the mother of the appellant husband asked her to sleep with his father is bound to anger him. It is his case that this humiliation of his parents caused great anguish to him. He and his family members were traumatised by the false and indecent statement made in the complaint. His grievance appears to us to be justified. This complaint is a part of the record. It is a part of the pleadings. That this statement is false is evident from the evidence of the mother of the respondent wife, which we have already quoted. This statement cannot be explained away by stating that it was made because the respondent wife was anxious to go back to the appellant husband. This is not the way to win the husband back. It is well settled that such statements cause mental cruelty. By sending the complaint the respondent wife has caused mental cruelty to the appellant husband.

28. Pursuant to this complaint, the police registered a case under Section 498-A of IPC. The appellant husband and his parents had to apply for anticipatory bail, which was granted to them. Later,

the respondent wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the respondent wife filed a protest petition. The trial court took cognisance of the case against the appellant husband and his parents (CC No. 62 of 2002). What is pertinent to note is that the respondent wife filed criminal appeal in the High Court challenging the acquittal of the appellant husband and his parents of the offence under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable under Section 498-A of IPC. She filed Criminal revision seeking enhancement of the punishment awarded to the appellant husband for the offence under Section 498-A IPC in the High Court, which is still pending. When the criminal appeal filed by the appellant husband challenging his conviction for the offence under Section 498-A IPC was allowed and he was acquitted, the respondent wife filed Criminal Appeal in the High Court challenging the said acquittal. During this period the respondent wife and members of her family have also filed complaints in the High Court complaining about the appellant husband so that he would be removed from the job. The conduct of the respondent wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant husband, in filing appeal questioning the acquittal of the appellant husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant husband.

21. In the present case, the nature and magnitude of the allegations made in the complaint given by the respondent under Ex.P4 are serious in nature. During cross-examination of the respondent, she has admitted that she has no knowledge about the contents of the complaint, Ex.P4 as it was only prepared by her father and paternal uncle and she merely signed it. Before the Family Court, when the respondent was examined, she admitted that most of the allegations made in the complaint, Ex.P4 are not correct. On the other hand, when the appellant has filed Criminal OP No. 7734 of 2013 before this Court seeking anticipatory bail apprehending arrest in Crime No. 1 of 2013 on the file of Inspector of Police, All Women Police Station, Ayanavaram, the respondent has filed MP No. 1 of 2013 seeking to permit her to intervene in the case so as to enable her to file

her objection for grant of anticipatory bail. On the one hand, the respondent states that the complaint under Ex.R4 was given out of an emotional outburst to save her matrimonial life. On the other hand, the respondent has filed MP No. 1 of 2013 objecting to the grant of anticipatory bail in favour of the appellant/husband. Further, as mentioned above, the respondent is not a laywoman or an illiterate. She is a Doctor by profession and definitely, she is fully aware of the consequences that may flow out of the uncereceremonious manner in which she has given the complaint falsely against the appellant husband and the impact it may have in continuing her matrimonial life. We also find that even according to the respondent, after receipt of the notice in the Petition filed by the appellant for dissolution of marriage, she has filed the Original Petition under Section 9 of the Restitution of Conjugal rights in OP No. 3964 of 2012. However, in OP No. 3964 of 2012, the respondent did not make any averment as to the complaint given by her under Ex.P4 against the appellant or the contents contained therein. Thus, the contents contained under Ex.P4 are held to be not true and it is an after-thought of the respondent to humiliate and harass the appellant. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of (K. Srinivas vs. K. Sunita) reported in (2014) 16 Supreme Court Cases 134, which was relied on by the learned Senior counsel for the appellant, wherein, in identical case, the Honourable Supreme Court held that the respondent-wife in her cross-examination has admitted that she did not mention all the incidents on which her complaint is predicated in her statement under Section 161 of Cr.P.C and therefore the criminal complaint given by the respondent is an after-thought. In Para Nos. 5 to 7 of this decision, it was held as follows:-

"5. The respondent wife has admitted in her cross-examination that she did not mention all the incidents on which her complaint is predicated in her statement under Section 161 Cr.P.C. It is not her case that she had actually narrated all these facts to the investigating officer, but that he had neglected to mention them. This, it seems to us, is clearly indicative of the fact that the criminal complaint was a contrived. We affirm the view of the High Court that the criminal complaint was "ill advised". Adding thereto is the factor that the High Court had been informed of the acquittal of the appellant husband and members of his family. In these circumstances, the High Court ought to have concluded that the respondent wife knowingly and intentionally filed a false complaint, calculated to emarrass and incarcerate the appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as

postulated in Section 13 (1) (i-a) of the Hindu Marriage Act.

6. Another argument which has been articulated on behalf of the learned counsel for the respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was led, as also when arguments were addressed, objection had not been raised on behalf of the respondent wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.

7. In these circumstances, we find that the appeal is well founded and deserves to be allowed. We unequivocally find that the respondent wife had filed a false criminal complaint and even one such complaint is sufficient to constitute matrimonial cruelty."

22. In the present case also, as we have held above, the respondent has given a false complaint against the appellant which was intended to humiliate and harass him. The respondent also failed to reiterate the complaint given by her under Ex.P4 in the Petition filed by her in OP No. 3964 of 2012 under Section 9 of The Hindu Marriage Act for restitution of conjugal rights. It is needless to mention that the above said OP No. 3964 of 2012 was filed by the respondent subsequent to complaint given by her under Ex.P4, however, she has not disclosed it in the Petition filed by her in OP No. 3964 of 2012. Even otherwise, the respondent, in her cross-examination has admitted that if the appellant would not have filed the OP No. 2804 of 2012 for dissolution of the marriage, she would not have given the complaint under Ex.P4. This only shows the ill intention on the part of the respondent to put the appellant behind bars and also to humiliate and harass him. Such act on the part of the respondent would definitely come within the meaning and definition of 'cruelty' as defined under the Hindu Marriage Act. In such view of the matter, we hold that the appellant has succeeded in establishing that he was subjected to matrimonial cruelty inflicted by the respondent towards him and consequently, the Order and Decree dated 04.03.2017 passed by the Court below deserves to be set aside.

22. In the result, we set aside the Order and Decree dated 04.03.2017 made in OP Nos. 2804 of 2012 and 3964 of 2012 on the file of II Additional Principal Family Court, Chennai. Resultantly, O.P. No. 2804 of 2012 filed by the appellant/husband under Section 13 (1) (i-a) of The Hindu Marriage Act for dissolution of the marriage is allowed and O.P. No. 3964 of 2012 filed by the respondent/wife under Section 9 of The Hindu Marriage Act for restitution of conjugal rights is dismissed. Consequently, both the Civil Miscellaneous Appeals are allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Principal Judge,
The II Additional Family Court,
Chennai.
2. The Section Officer,
VR Section,
Madras High Court,
Chennai.

+2cc to Mr. K. Sakthivel, Advocate, S.R.No.64668 & 64669
+4cc to Ms. Babitha Sunil, Advocate, S.R.No.64710 & 64709

CNR(CO)
CS/13/10/17

CMA Nos. 1364 & 1365/2017

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