

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.09.2017

Pronounced on : 10-11-2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH  
and  
THE HONOURABLE MR. JUSTICE P. VELMURUGAN

Civil Miscellaneous Appeal Nos. 2888 and 2889 of 2011

R. Seenu .. Appellant in both the appeals/Petitioner

Versus

N. Porkodi .. Respondent in both the  
appeals

C.M.A. No. 2888 of 2011:- Appeal filed under Section 19 of  
The Family Courts Act against the Order and Decreetal Order  
dated 30.04.2011 passed in O.P. No. 1036 of 2003 on the file of  
II Additional Family Judge, Chennai.

C.M.A. No. 2889 of 2011:- Appeal filed under Section 19 of  
The Family Courts Act against the Order and Decreetal Order  
dated 30.04.2011 passed in O.P. No. 2202 of 2004 on the file of  
II Additional Family Judge, Chennai.

For Appellant : Mr. V. Lakshminarayanan  
for M/s. Va.Vu.Si. Vaazhakagam  
in both the appeals

For Respondent : Mrs. D. Kamatchi  
in both the appeals

COMMON JUDGMENT

R. SUBBIAH, J

The appellant has come forward with this appeal aggrieved by  
the common order dated 30.04.2011 passed in O.P. No. 1036 of  
2003 and OP No. 2202 of 2004 on the file of II Additional Family  
Judge, Chennai. By the said Order dated 30.04.2011, the Family  
Court dismissed OP No. 1036 of 2003 filed by the appellant for  
dissolution of the marriage and allowed OP No. 2202 of 2004  
filed by the wife/ respondent herein under Section 9 of The  
Hindu Marriage Act for restitution of conjugal rights.

2. As both the appeals arise out of the common order dated 30.04.2011, besides common arguments have been advanced by counsel for both sides, these appeals are taken up together and are disposed of by this common judgment.

3. The appellant herein has filed OP No. 1036 of 2003 before the Family Court, Chennai under Section 13 (1) (i-a) of The Hindu Marriage Act, 1955, hereinafter called as the Act. As per the averments contained in the Original Petition, the marriage between the appellant and the respondent was solemnised on 14.11.1999 as per Hindu rites and customs at Aruna Thirumana Mandapam, Saidapet, Chennai - 600 015. It is the contention of the appellant that at the time of marriage, he or his family members did not demand any dowry from the respondent and in fact, he had spent a sum of Rs.2,00,000/- for commemoration of the marriage ceremony. Initially after the marriage, the appellant and the respondent commenced their matrimonial life at No.1, Kannithamizh Street, Bakthavachalam Nagar, Nanganallur Chennai and thereafter, they have shifted to Gandhi Nagar, Saligramam, where they lived till 19.03.2003. In the meantime, on 19.02.2003, due to the wedlock between the appellant and the respondent, a female child - Padmashri @ Priyadarshini was born. Soon after the birth of the child, when the appellant went to see the child, he was denied access by the respondent for the reasons best known to her. It was also complained by the appellant that the respondent never discharged her matrimonial obligations as a dutiful Hindu wife. It was specifically stated that the respondent never used to cook food in the house, with the result, the appellant was compelled to buy food from the hotel. It was also complained that the respondent failed to keep the house clean. Whenever it was questioned, the respondent projected rude and unruly behaviour towards him, which often ended in quarrel. Further, the respondent threatened the appellant that she would foist false case against him if he questions her behaviour. Even though the appellant portrayed kind behaviour towards the respondent and even extended financial assistance for purchase of Maruti 800 Air-conditioned car to the brother of the respondent namely Sudhakar at the time of his marriage, the respondent has not equally reciprocated the love and affection shown by him. Further, the respondent prevented the appellant from meeting his aged parents at his native place. According to the appellant, on 23.03.2002 at about 8 p.m. the respondent picked up quarrel with him for trivial and unnecessary reasons and assaulted him with hands. Notwithstanding the same, the respondent called upon her father, brother and other relatives to come to the matrimonial home and they have also visited the matrimonial home and had beaten the appellant without ascertaining the reasons for the quarrel between the couple. As the appellant suffered physically and

mentally at the instance of the respondent, the matrimonial life between them has broken irretrievably. Therefore, the appellant has filed the Original Petition seeking dissolution of the marriage solemnised on 14.11.1999 on the ground of desertion and cruelty.

4. Resisting the Original Petition, the respondent has filed a counter affidavit by denying the various averments made by the appellant. Denying the averments that the appellant or his family members did not demand any dowry, the respondent submitted that at the time of marriage, as per the demands made by the appellant and his family members, the parents of the respondent offered 60 sovereigns of gold jewels besides entire house articles befitting to their status. That apart, the parents of the respondent also incurred a sum of Rs.7 lakhs for performance of the marriage, as required by the appellant. According to the respondent, the appellant is working as an Assistant Engineer in Tamil Nadu Electricity Board and the respondent is also a Graduate in Engineering. The respondent contended that she discharged her matrimonial obligations completely and only during her pregnancy, she was unable to cook food and the appellant brought food items from hotel. Further, on 19.02.2003, a female baby was born. Due to medical complications, the baby was prematurely delivered by caesarian and it weighed only 1.900 kilograms. In those circumstances, soon after the delivery of the child, for a few days, the access to the appellant and his relatives were denied and thereafter, the appellant and his relatives have visited the child as well as the respondent. In fact, due to petty quarrel between the appellant and the respondent, the respondent was driven out of the matrimonial home and therefore, on 23.03.2002, the parents of the respondent along with their family members went to the matrimonial home for a compromise talk. However, the appellant ill treated the parents of the respondent and other family members. Therefore, the parents of the respondent and others returned home without any solution to the separation of the couple. While so, the appellant has given a false complaint against the respondent and his relatives as the relatives of the respondent have assaulted him. On enquiry, the Inspector of Police, finding that the complaint given by the appellant is false, advised him to lead a peaceful life with the respondent. Thereafter, the appellant went to the office of one Mr. Vasanthakumar, Advocate to file a petition for divorce and he has also advised the appellant to lead a peaceful life with the respondent without resorting to any matrimonial proceedings to untie the matrimonial relationship with the respondent, as it was found that there is no reason for filing a petition with respect to a trivial matrimonial dispute. In essence, it was stated in the counter statement that the dispute between the appellant and the respondent is trivial and it does not warrant

dissolution of the marriage. It was further stated that the respondent is always ready and willing to live with the appellant to lead a peaceful and blissful life. Therefore, she prayed for dismissal of the Original Petition for dissolution of the marriage.

5. With the very same averments made in the counter statement in OP No. 1036 of 2003 filed by the appellant for dissolution of marriage, the respondent has filed OP No. 2202 of 2004 under Section 9 of the Act for restitution of conjugal rights.

6. The appellant filed his counter statement in response to OP No. 2202 of 2004 filed by the respondent for restitution of conjugal rights, wherein, among other things, it was stated that the matrimonial dispute has arisen due to the frequent visits of the respondent to her parents house without any necessity. It was further stated that after the appellant filed OP No. 1036 of 2003, the relatives of the respondent visited his office and threatened him to withdraw the Original Petition filed by him for dissolution of marriage. It was further contended that the respondent has no inclination to lead a happy matrimonial life with the appellant and she only listened to the ill-advice given to her by her parents. The appellant therefore prayed for dismissal of OP No. 2202 of 2004 filed by the respondent.

7. Before the Family Court, the appellant examined himself as PW1 and marked Exs. P1 to P18. Similarly, the respondent examined herself as RW1 and the father of the respondent namely Mr. Nagappan was examined as RW2 and Ex.R1, Counter affidavit filed in CrI.R.C. No. 260 of 2006 was marked. The Family Court, on appreciation of the oral and documentary evidence concluded that the appellant failed to prove, by acceptable evidence, that the respondent deserted his matrimonial company voluntarily, but the desertion of the respondent was only due to harassment caused by the appellant himself. It was further concluded that the matrimonial dispute between the appellant and the respondent is trivial and it is common in all family. Therefore, it was held that the matrimonial dispute between the appellant and the respondent is not such that it warrants dissolution of their marriage by granting a decree of divorce. Accordingly, the Family Court dismissed the Original Petition filed by the appellant for grant of a decree of divorce and allowed the Original Petition filed by the respondent for restitution of conjugal rights.

8. The learned counsel appearing for the appellant would vehemently contend that all was not well in the matrimonial life from the beginning of the marriage and the strained matrimonial

relationship between the couple is attributable largely towards the respondent. According to the learned counsel for the appellant, the respondent never cooked food for the appellant, failed to keep the house spic and span, as wished by the appellant. That apart, during the course of matrimonial home, the respondent has also assaulted the appellant severely and also uttered abusive words whenever the appellant questioned her for not cooking food or engaging herself in domestic work. However, in the counter affidavit, it was stated that due to her ill-health, she could not cook food or engage in house hold works. When a specific question was put to RW1/respondent during cross-examination, she has stated that there is no medical evidence produced to prove her illness. The learned counsel for the appellant further submitted that on 23.03.2002, the father, mother, uncle, brother and relatives of the respondent came to the matrimonial home and at that time, they have assaulted the appellant. In this context, the appellant gave a complaint under Ex.P16 to the Inspector of Police, Virugambakkam Police Station, based on which a CSR receipt, under Ex.P18 was given to him. However, no action was taken on the basis of such complaint due to the influence made by the relatives of the respondent. The respondent also, in her chief examination in OP No. 1036 of 2003 admitted that her father and other relatives visited the house of the respondent on 23.03.2002. Above all, on 27.06.2003 and 29.07.2003, the relatives of the respondent along with unknown persons came to his office and threatened him to withdraw the petition filed by him in OP No. 1036 of 2003 for dissolution of the marriage. Further, the appellant was threatened with dire consequences by saying that unless he withdraws the Petition, they will ensure that the appellant will be terminated from his employment. The relatives of the respondent have also caused commotion at the office of the respondent and thereby he was put to shame and degradation. Thereafter, complaining continuous harassment by the relatives of the respondent, the appellant has given another complaint under Ex.P5 on 16.11.2005 to the Inspector of Police, Pazhavanthangal Police Station, over which also no action was taken. Therefore, the appellant sent a complaint dated 23.11.2005, Ex.P7 to the Secretary to the Government, Home Department, Government of Tamil Nadu indicating the manner in which the complaints given by him were dealt with by the officials of the police Department. As a counter-blast, the respondent has given a false complaint on 12.01.2006 against the appellant, his mother Senthamarai, his father Ramachandran, his sisters and brother-in-laws as though they have demanded dowry. When the relationship between the appellant and the respondent strained even in the year 2003, the complaint given on 12.01.2006 as though the appellant and his parents, sisters and brother-in-laws demanded dowry is nothing but falsehood. However, on the basis of such complaint, a case in Crime No. 1

of 2006 was registered on the file of W-32, All Women Police Station on 16.01.2006 and on the same day, the appellant and his brother-in-law Imayavarambhan were arrested and produced before the learned Judicial Magistrate, Alandur for remanding them to Judicial Custody. Before remand, the remand report was taken up for consideration by the learned Judicial Magistrate, Alandur. By order dated 19.01.2006, it was categorically held by the learned Judicial Magistrate, Alandur that on perusal of the first information report and remand report, it is clear that the ingredients of the offence alleged against the accused are not made out and therefore, the accused namely the appellant and his brother-in-law were set at liberty. Thus, the attempt made by the respondent to put the appellant and her brother-in-law under incarceration failed. Such an attempt was made by the respondent only to ensure that the appellant is terminated from his government employment. Notwithstanding the same, the respondent has filed Crl.R.C. No. 260 of 2008 before this Court challenging the said order dated 19.01.2006 passed in Crime No. 1 of 2006. After 5 years, when the Crl.R.C. No. 260 of 2008 was taken up for hearing by this Court on 27.08.2013, it was withdrawn by the petitioner.

9. Further, to falsify the complaint given by the respondent herself on 12.01.2006, during the course of cross-examination before the Family Court, the respondent has deposed that even in the petition filed by her for restitution of conjugal rights, she has not made any whisper about the alleged demand made by the appellant and her in-laws for dowry. Thus, it is clear that the complaint dated 12.01.2006 was given by the respondent, knowing it to be false, with an intention to harass the appellant and ensure that he is terminated from his employment. This attitude on the part of the respondent has caused mental and physical cruelty to the appellant. In the complaint, inter alia, she has stated in one line that “இந்த நிலையில் வரதட்சணைக் கேட்டு என்னை கொடுமைப்படுத்தி வந்தார்கள். மேலும் 20 சவரன் நகை கட்டாயப்படுத்தி வாங்கினார்கள்.” Except this portion of the complaint, there was nothing to suggest that there was any demand for any dowry. In support of this contention, the learned counsel for the appellant placed reliance on the decision of the Honourable Supreme Court in the case of (K. Srinivas vs. K. Sunita) reported in (2014) 16 Supreme Court Cases 34, wherein the Honourable Supreme Court held in Para No.25 to 27 as follows:-

“25. According to the appellant-husband, on 06.12.2009, the brother of the respondent wife came to their house and attacked his mother. His mother filed a complaint and the police registered a complaint under Section 354 IPC. The brother of the respondent wife lodged a complaint and an offence came to be registered.

Both the cases are pending.

26. On 29.06.2010, Criminal Appeal No. 186 of 2010 filed by the appellant husband challenging his conviction for the offence under Section 498-A of IPC was allowed by the Metropolitan Sessions Judge and he was acquitted. The respondent wife has filed criminal appeal in the High Court, challenging the said acquittal which is pending.

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 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 this complaint the respondent wife has caused mental cruelty to the appellant husband."

10. The learned counsel for the appellant also further relied on the decision of the Honourable Supreme Court in the case of (K. Srinivas and K. Sunita) reported in (2016) 16 Supreme Court Cases 34 wherein it was held in Para Nos. 6 and 7 as follows:-

"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 fact 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 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."

11. Relying on the above decisions, the learned counsel for the appellant submitted that in this case also, a false complaint was given by the respondent against the appellant and his brother and thereby he was subjected to malicious prosecution besides it had caused mental agony.

12. It is also brought to the notice of this Court by the learned counsel for the appellant that the respondent, on her own behalf and on behalf of the minor daughter has also filed M.C. No. 316 of 2009 before the I Additional Family Court, Chennai under Section 125 of Criminal Procedure Code claiming maintenance of Rs.10,000/- per month. By order dated 02.12.2016, M.C. No. 316 of 2009 was allowed by directing the appellant herein to pay a sum of Rs.5,000/- each to the respondent and the minor daughter towards maintenance.

13. Above all, it is submitted by the learned counsel for the appellant that even three months prior to the birth of the child namely on 19.02.2003, the appellant and the respondent were living separately. In other words, from January 2003, the couple are residing separately for the past 14 years. The respondent has also treated the appellant cruelly during the course of matrimonial life, which could be evident from the false complaint given by her on 12.01.2006, Ex. P13. The learned counsel for the appellant would further contend that the due to the wedlock between the appellant and the respondent, on 19.02.2003, a female child was born. The appellant was not invited for the naming ceremony or the name for the baby child was not of the choice of the appellant. Even though the appellant suggested to christen the name of the child as 'Padmashri' it was refused by the respondent and the respondent, as wished by her parents and her relatives, have chosen the name to be christened to the female child as Priyadarshini. Further, after the child birth, inspite of many efforts made by the appellant, he was not allowed to see the minor female child till this date. This has caused enormous mental agony to the appellant as he was denied access to see his own daughter. In any event, the appellant and the respondent were living separately from 2003 and this has widened the matrimonial relationship between them, leaving little or no scope for their re-union. While so, the learned counsel for the appellant

prayed for setting aside the orders of the Court below and to allow the Criminal Appeals as prayed for.

14. Per contra, the learned counsel for the respondent would contend that a perusal of the Original Petition filed by the appellant, seeking dissolution of the marriage, would indicate that those averments are generic, vague and it will not constitute any matrimonial cruelty. The allegations relating to the refusal on the part of the respondent to cook food, to keep the house spick-and-span, leaving the matrimonial home often to go over to her parents house were not substantiated by the appellant. Further, it was alleged that the respondent/wife assaulted the husband/appellant. However, to substantiate this averment, there is no evidence forthcoming from the appellant during his examination besides the appellant has not examined any other independent witness to substantiate most of the averments made in the Original Petition. Even in the counter affidavit filed by the appellant to the Original Petition filed by the respondent for restitution of conjugal rights, he has not whispered anything except those averments which were already made in the Original Petition filed by him. Thus, according to the learned counsel for the respondent, when the appellant alleges that he was subjected to matrimonial cruelty at the hands of the respondent, the burden is on him to prove it by material evidence, but he miserably failed to establish it. Therefore, according to the learned counsel for the respondent, the dispute between the appellant and the respondent is not such that it warrants dissolution of the marriage. In support of this contention, the learned counsel for the respondent relied on the decision of the Honourable Supreme Court in the case of (State of Rajasthan vs. Ganesh Lal) Civil Appeal No. 3021 of 2006 dated 18.12.2007 wherein it was held that the Courts should not place reference on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Reference was also made by the learned counsel for the respondent

15. The counsel for the respondent also relied on the decision of the Honouable Supreme Court in case of (Kulvinder Singh vs. Asha Chauhan) RSA No. 3669 of 2017 dated 17.07.2017 wherein it was held that it is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference.

16. The learned counsel for the respondent would further contend that the filing of criminal complaint by the respondent/wife against the appellant and her brother-in-law on 12.01.2006 and the registration of the case in Crime No. 1 of

2006 on the file of W-32, All Women Police Station on 16.01.2006 are subsequent to the filing of the Original Petition and therefore, they have no significance for consideration of the matrimonial dispute between the parties. Further, the respondent wife is always ready and willing to join the appellant in the matrimonial home and this was also clearly stated by her in the petition filed for restitution of conjugal rights. It is further stated that due to the wedlock between the appellant and the respondent, a female child was born and she is now aged 14 years. Therefore, in the interest of the minor daughter, re-union of the appellant and the respondent is absolutely necessary. In such circumstances, the learned counsel for the respondent prayed for dismissal of these appeals.

17. We have given our anxious consideration to the rival submissions made. As we have dealt with the factual matrix of the case in detail, we are not inclined to deal with the same any further. However, suffice it to state that the marriage between the appellant and the respondent was solemnised on 14.11.1999 and out of such wedlock, a female child was born 19.02.2003. According to the appellant, the respondent failed and neglected to discharge her matrimonial obligations and this has often resulted in quarrel between them. On the other hand, the respondent denied having failed in her matrimonial obligations and even if it is so, it will not constitute matrimonial cruelty, as defined under Section 13 (1) (i) (i-a) of the Hindu Marriage Act.

18. With this factual background, let us analyse as to whether the appellant was subjected to matrimonial cruelty or not. Before dealing with this principle, we wish to reiterate that the word 'cruelty' is not precisely defined under Section 13 of the Act and in the words of the Honourable Supreme Court, the term 'cruelty' has to be presumed depending upon the facts of each case. In the present case, the appellant is employed as an Assistant Engineer in Tamil Nadu Electricity Board. The appellant, besides alleging that the respondent failed and neglected to discharge her matrimonial obligations, has also alleged that he was physically assaulted by the respondent on some occasion. It was also stated that on 23.03.2002, the father, brother, uncle and aunt of the respondent came to the matrimonial home for a compromise talk at about 8.00 p.m., as, by then, the relationship between the appellant and the respondent was strained and the respondent was in her parents house. It was complained by the appellant that during such compromise talk, a wordy quarrel erupted in which he was assaulted by the father, uncle and brother of the respondent. In this context, on the next day, the appellant has given a complaint, Ex.P16 dated 24.03.2002 before the Inspector of Police, Virugambakkam Police Station. The fact that the father, mother, uncle and brother went to the residence of the appellant

on 23.03.2002 was also admitted by the respondent during her examination as PW1. Therefore, three things can be presumed namely (i) even before 23.03.2002, the respondent was in her parents house (ii) the matrimonial relationship between the appellant and the respondent strained before that date and (iii) the appellant was alleged to have been assaulted by the father, uncle and brother of the respondent, which prompted him to give a complaint under Ex.P16. Further, the appellant, during his examination as PW1, has also categorically indicated that he was assaulted physically by his in-laws on 23.03.2002 which prompted him to give the complaint under Ex.P16 dated 24.03.2002.

19. Yet another factor for consideration is the complaint given by the respondent on 12.01.2006, marked as Ex.P13. We have gone through the contents of Ex.P13 in which reference was made by the respondent to the peaceful matrimonial relationship for one year from the date of marriage and the factum of birth of the female child. Thereafter, the respondent referred to the strained relationship between them, the Original Petition filed by the appellant seeking divorce and the various attempts said to have been made by her for re-union. First of all, the appellant and the respondent were living separately from 23.03.2002 or in other words, their relationship strained atleast from that date. Therefore, there may not be any occasion for the appellant to have demanded dowry. Notwithstanding the same, the complaint dated 12.01.2006 was entertained and a case in Crime No. 1 of 2006 dated 19.01.2006 was registered on the file of All Women Police Station, St. Thomas Mount, for the alleged offences punishable under Sections 498 (A), 406 and 506 (ii) of IPC. The said first information report was marked as Ex.P14. On perusal of the first information report, it could be seen that the complaint was registered against the appellant and seven of his family members. On the basis of the registration of the complaint, the appellant and his brother were arrested and produced for remand. The learned Judicial Magistrate, Alandur, on perusal of the first information report and remand report, passed an order dated 19.01.2006 stating that "the defacto complainant is said to be living in her parents house from December 2003. Therefore, there is no necessary ingredients in the FIR as well as in the remand report to make out an offence under Section 498 (A) of IPC." Accordingly, the learned Judicial Magistrate, Alandur refused to remand the appellant and his brother and set them at liberty. The said order dated 19.01.2016 passed by the learned Judicial Magistrate, Alandur was marked as Ex.P15. Aggrieved by the said order dated 19.01.2016, the respondent filed Cr1.R.C. No. 260 of 2006 before this Court. However, when Cr1.R.C. No. 260 of 2006 was listed for hearing on 27.08.2013, the counsel for the petitioner withdrew the Criminal Revision Case.

20. On appreciation of the above evidence, it is clear that the complaint dated 12.01.2006 given by the respondent is nothing but a falsehood besides it is an after-thought. In this context, we find force in the submission of the learned counsel for the appellant that the complaint dated 12.01.2006 was given by the respondent only to see that the appellant is terminated from his government employment. At this juncture, it has to be noted that mere submission of a criminal complaint relating to matrimonial cruelty by the aggrieved spouse by itself would not constitute an offence or it would constitute 'matrimonial cruelty', but the foundation for such complaint must be based on real events and truth. In this case, the criminal complaint given by the respondent against the appellant and seven of his family members, knowing it to be false, in our opinion, is nothing short of cruelty. The mental and physical pressure incurred by the appellant, when his family members are sought to be maliciously prosecuted, would be such that no prudent spouse would thereafter even think of having a re-union or to keep the matrimonial relationship intact.

21. The Honourable Supreme Court in the case of (Raj Talreja vs. Kavita Talreja) reported in 2017 (4) CTC 208, finding that the respondent therein has made reckless, defamatory and false accusations against her husband, family members and colleagues, held that such frivolous complaint would definitely have the effect of lowering the reputation of the husband in the eyes of his peers. It was further held that mere filing of complaint is not cruelty, if there are justifiable reasons to file the complaint. However, if it is found that the allegations are patently false then there can be no manner of doubt that the said conduct of a spouse in levelling false accusations against the other spouse would be an act of cruelty.

22. The learned counsel for the respondent relied on two unreported decisions of the Honourable Supreme Court in the case of (State of Rajasthan vs. Ganesh Lal) Civil Appeal No. 3021 of 2006 dated 18.12.2007 and another decision in (Kulvinder Singh vs. Asha Chauhan) RSA No. 3669 of 2017 dated 17.07.2017 wherein it was held that the Courts should not place reference on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed and the peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. There is no quarrel with respect to the said proposition of law laid down by the Honourable Supreme Court. If the facts in the case on hand is considered, we can only come to the conclusion that criminal complaint given by the respondent is part of the records which would give rise to a presumption that such complaint was an after-thought and it had further strained the matrimonial

relationship between the spouse.

23. The learned counsel for the respondent would contend that the complaint under Ex.P13 was given by the respondent only to ensure that she re-joins the matrimonial home with the appellant and therefore, it cannot be construed as an attempt to harass the appellant and his family members. We are not in a position to accept such submission of the counsel for the respondent. The respondent is an Engineering Graduate and she is not an illiterate. The respondent must be fully aware of the consequences that may flare up by giving such complaint and the resultant effect it will have in relation to the matrimonial relationship between the spouse. This is more so that already the matrimonial relationship between the spouse has been strained and the Original Petition filed by the appellant and the respondent respectively were pending before the Family Court, Chennai. Further, if really the complaint was given by the respondent with an intention to get re-union with the appellant, we feel that there is no justification on the part of the respondent to file Criminal Revision Case No. 260 of 2016 against the order dated 19.01.2016 passed by the learned Judicial Magistrate, Alandur. This only shows that the respondent has only intended to ensure that the appellant/husband is put behind bars so that he will be thrown out of his government employment and also to harass him and his family. While so, the contention of the counsel for the respondent that the criminal complaint was given only with an intention to get re-union with the appellant has no force.

24. In this context, the decision relied on by the learned counsel for the appellant in (K. Srinivas Rao vs. D.A. Deepa) reported in (2013) 5 SCC 226 has to be looked into. 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. This decision squarely applies to this case. In this case also, we feel that the complaint given by the respondent under Ex.P13 is intended to remove the appellant-husband from his government employment

and such complaint is not intended to have a re-union with the appellant. The allegations levelled against the appellant and his family members under Ex.P13 are serious in nature, it has caused a deep scar and wound in the mind of the appellant besides caused him mental cruelty. Thus, the nature and magnitude of the allegations made in the complaint given by the respondent under Ex.P13 are serious in nature.

25. Notwithstanding the above conclusion, we also find that both the appellant and the respondent are living separately from 2003 for the past 14 years. In this context, useful reference can be made to the decision of the Honourable Supreme Court in (Durga Prasanna Tripathy vs. Arundathi Tripathy) reported in 2005 AIR SCW 4045 wherein it was held that the parties therein are residing separately for 14 years and therefore the Honourable Supreme Court granted a decree of divorce by finding that the matrimonial relationship has irretrievably broken leaving little or no scope for re-union. In Para No.29 and 30, it was held as follows:-

"29. The facts and circumstances in the above three cases disclose that reunion is impossible. Our case on hand is one such. It is not in dispute that the appellant and the respondent are living away for the last 14 years. It is also true that a good part of the lives of both the parties has been consumed in this litigation. As observed by this Court, the end is not in sight. The assertion of the wife through her learned counsel at the time of hearing appears to be impractical. It is also a matter on record that dislike for each other was burning hot.

30. Before parting with this case, we think it necessary to say the following. Marriages are made in heaven. Both parties have crossed the point of no return. A workable solution is certainly not possible. Parties cannot at this stage reconcile themselves and live together forgetting their past as a bad dream. We, therefore, have no other option except to allow the appeal and set aside the judgment of the High Court and affirming the order of the Family Court granting decree of divorce. The Family Court has directed the appellant to pay a sum of Rs.50,000/- towards permanent alimony to the respondent and pursuant to such direction, the appellant had deposited the amount by way of bank draft. Considering the status of parties and the economic condition of the appellant who is facing criminal prosecution and out of job and also considering the status of the wife who is employed,

we feel that a further sum of Rs.1 lakh by way of permanent alimony would meet the ends of justice. This shall be paid by the appellant within 3 months from today by an account payee demand draft in favour of the respondent-Arundhati Tripathy and the dissolution shall come into effect when the demand draft is drawn and furnished to the respondent."

26. In the present case also, admittedly, the appellant and the respondent are residing separately for the past 14 years. The long separation between them would render the matrimonial life slipping to a stage beyond retrieval. The matrimonial life between the appellant and the respondent has irretrievably broken leaving little or no scope, practically, for re-union of the couple, at this stage. Thus, no useful purpose could be achieved by keeping the matrimonial tie alive when practically there is no possibility or chance for the couple to get re-union. Further, such a period of separation also satisfies the ingredients for dissolving the marriage between the appellant and the respondent. Therefore, in the best interest of the appellant and the respondent, it is desirable that the matrimonial relationship between them has to be snapped leaving the parties to decide their future course of living in the manner they wish.

27. In the result, we set aside the Common Order and Decree dated 30.04.2011 passed in O.P. No. 1036 of 2003 and O.P. No. 2202 of 2004 on the file of II Additional Family Judge, Chennai. Consequently, OP No. 1036 of 2003 filed by the appellant/husband is allowed by granting a decree of divorce dissolving the marriage solemnised between the appellant and the respondent on 14.11.1999 and OP No. 2202 of 2004 filed by the respondent for restitution of conjugal rights is dismissed. Resultantly, both the Civil Miscellaneous Appeals are allowed. No costs.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-)

//True Copy//

WEB COPY Sub Assistant Registrar

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To

1, THE II ADDITIONAL FAMILY JUDGE  
FAMILY COURT  
CHENNAI

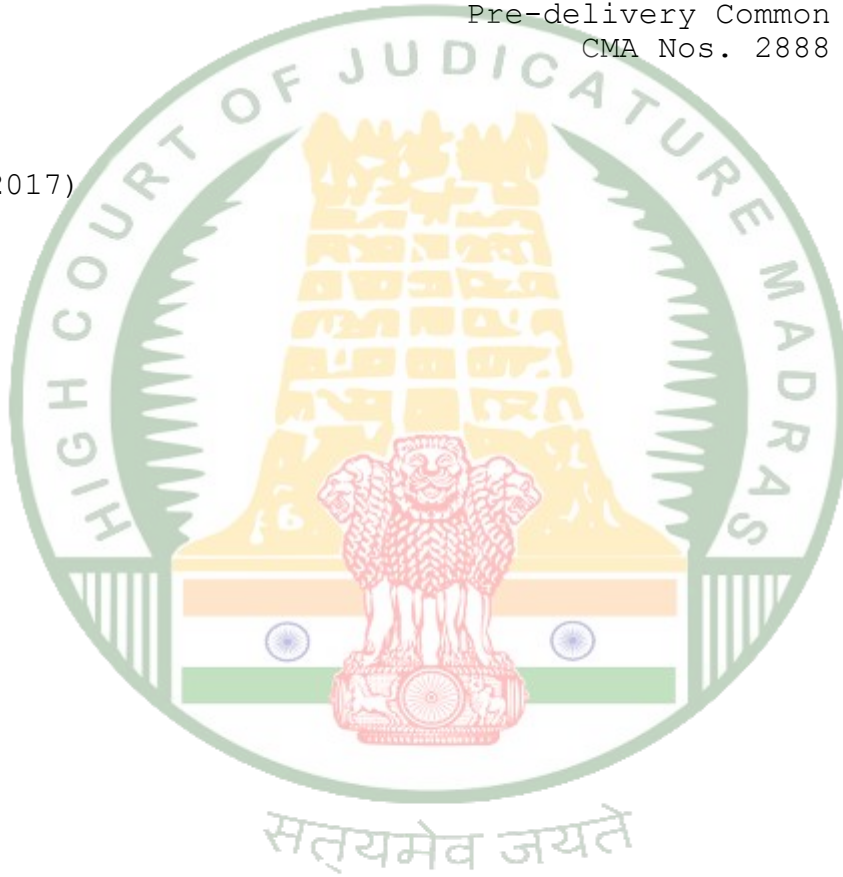
2, THE SECTION OFFICER,  
V.R. SECTION, HIGH COURT, MADRAS.

+2cc to Mr.KAMACHI-D Advocate, S.R.No. 79802

+1cc to Mr.VA VU SI VAZHAKAGAM Advocate, S.R.No. 79796

Pre-delivery Common Judgment in  
CMA Nos. 2888 & 2889/2011

(CO)  
TR(04/12/2017)



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