

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19-07-2018

Pronounced on : 02-11-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

Civil Miscellaneous Appeal No. 1174 of 2008

C. Premalatha .. Appellant

Versus

A. Baskar .. Respondent

Appeal filed under Section 19 of The Family Courts Act, 1988 against the Judgment and Decree dated 11.12.2007 made in F.C.O.P. No. 32 of 2002 on the file of Family Court, Salem

For Appellant : Mr. R. Nelliappan
For Respondent : Mr. P. Jagadeesan

JUDGMENT

R. Subbiah, J

The appellant has come forward with this appeal questioning the correctness and/or validity of the Judgment dated 11.12.2007 passed by the Family Court in FCOP No. 32 of 2002. By the said Judgment, the Family Court allowed the Original Petition filed by the respondent herein under Section 13 (1) (i-a) of The Hindu Marriage Act and dissolved the marriage solemnised between the appellant and the respondent on 22.05.1994. Aggrieved by the same, the appellant/wife is before this Court with this Civil Miscellaneous Appeal.

2. As per the averments made in FCOP No. 32 of 2002 filed by the respondent, he married the appellant on 22.05.1994 as per Hindu rites and customs at Salem. After the marriage, the respondent and the appellant resided in the house of the respondent along with his parents and brother. It is the contention of the respondent that soon after the marriage, the appellant insisted and demanded him to come out of the joint family and to stay in her parents house at Vadakathampatti,

which he refused. In this context, quarrel emanated and erupted between the appellant and the respondent. It is also the contention of the respondent that the appellant has not discharged her matrimonial obligations or attended the household chores. When it was questioned, she abused the respondent in filthy language. On 28.04.2001, the appellant has given a false complaint to the All Women Police Station, Salem complaining that the respondent and his family members have assaulted and harassed her. On the basis of such complaint, the respondent and his family members were enquired by the police officials and thereby she had brought disrepute to the respondent and his family members. However, on the advise of the relatives of the appellant, she withdrew the complaint. Even thereafter, according to the respondent, the appellant demanded him to shift the matrimonial home to her father's house and on such refusal, she had given another false complaint against the respondent and his family members as if they demanded dowry. Therefore, once again, the respondent and his family members were dragged to the Police Station, where they were humiliated. Thereafter, acceding to the pressure of the appellant, the respondent shifted to a separate residence at Alagapuram Periyapudur where the appellant and the respondent lived for some time. Even at the new residence, the appellant ill-treated and subjected the respondent to matrimonial cruelty. At the height of such cruelty, the appellant alleged that the respondent is having an illicit intimacy with his elder brother's wife and thereby the respondent was put to shame and degradation. The appellant also threatened the respondent that she would commit suicide and would throw the blame on the respondent. In those circumstances, the respondent has filed the FCOP No. 32 of 2009 for dissolution of marriage on the ground of cruelty.

3. Repudiating the averments in the Original Petition, the appellant has filed a counter affidavit contending inter alia that she never insisted the respondent to shift the matrimonial home and to stay in her parents house. She discharged her matrimonial obligations and looked after the respondent and his family members well. Due to the wedlock, on 24.11.1995, a male child was born to them. While so, on 28.04.2001 and 25.08.2001, the respondent and his parents have demanded dowry to be brought from her parents house and on her refusal, they physically assaulted her. In fact, on 25.08.2001, the respondent caused bleeding injury to the appellant and she was admitted in the Government Hospital, Salem. On the basis of the intimation given by the hospital authorities, the police personnel attached to the Fair Wells Police Station have obtained her statement in the hospital. An enquiry was conducted in which the respondent was advised to set up a separate residence and to live peacefully. Accordingly, the respondent had taken a house for rent in Azhagapuram Periyapudur and stayed there for some time

peacefully. However, at the instigation of his parents, the respondent started harassing her physically and mentally. The respondent also prevented the appellant from going to her brother's house. At no point of time, the appellant has stated that the respondent is having an illicit intimacy with his elder brother's wife and the said allegation is nothing but a falsehood. Even when the appellant and the respondent were residing in the rented premises at Azhagapuram, the respondent, through his counsel, had sent a notice dated 11.12.2001 for which a suitable reply dated 27.12.2001 was sent by her. According to the appellant, even at the time of filing the Original Petition, the appellant and the respondent were residing together, while so, on 17.02.2002, the respondent had physically assaulted and made the appellant to desert his matrimonial company. It is the contention of the appellant that at no point of time, she had subjected the respondent to matrimonial cruelty, on the other hand, it is she, who was harassed and subjected to untold mental agony and hardship by the respondent. It is also contended by the respondent that after filing the Original Petition, she came to know that the respondent had married another girl by name Thirumagal, while so, the respondent is not entitled for a decree of divorce, as prayed for. The appellant only expect the respondent to come and live with her and the minor son and she prayed for dismissal of the Original Petition.

4. Before the Family Court, on behalf of the respondent, he examined himself as PW1 and one Stephen Jayaraj as PW2 and Exs. P1 to P13 were marked. On behalf of the appellant, she examined herself as RW1, one Chinnapaiyan as RW2 and Aandi Gounder as RW3 and Exs. R1 to R14 were marked. On analysing the oral and documentary evidence, the Family Court came to the conclusion that the appellant had given repeated complaints against the respondent and his family members whereby she subjected the respondent to acute matrimonial cruelty and also brought disrepute to the family of the respondent. The Family Court also rendered a finding that due to such complaints given by the appellant, the respondent and his family members were made to run between Police Station and the Court to get anticipatory bail. The Family Court rendered a specific finding that by virtue of such complaints preferred by the appellant, she made the respondent to undergo sleepless night and such an action on the part of the appellant will fall within the meaning and definition of cruelty as defined under Section 13 (1) (i-a) of The Hindu Marriage Act. Accordingly, the Family Court accepted the plea of the respondent herein and granted a decree of divorce dissolving the marriage solemnised between the appellant and the respondent on 22.05.1994.

5. Assailing the Judgment of the Family Court, the

appellant has filed the above Civil Miscellaneous Appeal before this Court. When the Appeal was taken up for hearing, this Court, by Judgment dated 15.12.2011, disposed of the above Civil Miscellaneous Appeal with the following observation:-

"3. The husband has filed an affidavit dated 07.12.2011 stating that in order to amicably settle the dispute between him and the wife, he is offering a sum of Rs.5,00,000/- (Rupees Five Lakhs Only) to his wife and minor son Eswararaj towards permanent alimony for granting divorce, if the wife and son do not insist for payment of the maintenance amount as fixed by the Family Court, Salem in M.C. No. 35 of 2008 and enhanced by this Court on 25.11.2011 in CrI.R.C. No. 483 of 2011. In the said affidavit, husband has also given an undertaking to the effect that he will pay the said sum of Rs.5,00,000/- to his wife within a period of three months from that date.

4. Though we gave opportunity to the learned counsel appearing for the wife to get instructions with regard to the offer made by the husband, she did not come forward with any reply viz., whether she is willing to accept the offer of Rs.5 lakhs made by her husband as full and final settlement of her claim towards maintenance or not. Therefore, to meet the ends of justice and in the welfare of both the parties, we consider it appropriate to dispose of this Civil Miscellaneous Appeal with a direction to the respondent (husband) to pay the sum of Rs.5 lakhs, offered by him to his wife towards full and final settlement of her claim for maintenance, on or before 31.03.2012. In view of the said direction given by us, we hold that the wife is not entitled to receive any other amount towards maintenance and the divorce granted by the Family Court, Salem in F.C.O.P. No. 32 of 2012 is confirmed. No costs. Connected miscellaneous petition is closed."

6. Aggrieved by the Judgment dated 15.12.2011 passed in the above Civil Miscellaneous Appeal, the appellant has filed Civil Appeal No. 6344 of 2012 (Appeal by Special Leave (Civil) No. 12022 of 2012) before the Honourable Supreme Court. The Honourable Supreme Court, by the Judgment dated 05.09.2012 set aside the Judgment dated 15.12.2011 passed in the above Civil Miscellaneous Appeal and remanded the matter back to this Court for fresh consideration.

7. The learned counsel appearing for the appellant would

vehemently contend that the Family Court erroneously held that the appellant had repeatedly given complaints against the respondent and his family members and thereby brought disrepute to him. However, the fact remains that the appellant has given only a complaint dated 08.04.2003 before the Kondalampatti Police Station based on which the case in Crime No. 397 of 2003 came to be registered against the respondent and his family members for the offence punishable under Section 494, 498-A and 406 of IPC read with Section 4 of the Dowry Prohibition Act. While so, the finding rendered by the Family Court as though the appellant had repeatedly given complaint after complaint against the respondent and his family is contrary to the evidence made available. The Family Court erroneously had taken into account the earlier complaint dated 28.04.2001 which was later compromised and the appellant and the respondent commenced their marital life. In any event, according to the learned counsel for the appellant, merely because the appellant has given a complaint, it would not be construed that she had subjected the respondent to matrimonial cruelty and the said allegation will not fall within the scope and ambit of cruelty as defined under Section 13 (1) (i-a) of The Hindu Marriage Act. Furthermore, the respondent, during the pendency of the Original Petition had contracted a second marriage with one Thirumagal and it was also admitted by him in his deposition. Furthermore, a female child named as Subasri was also born due to such wedlock between the respondent and the said Thirumagal during the pendency of the present Civil Miscellaneous Appeal on 19.07.2014. Thus, it is the respondent who had subjected the appellant to matrimonial cruelty and this was not properly appreciated by the Court below. Since the respondent had contracted a second marriage during the pendency of the Original Petition, he has caused cruelty to the appellant/wife and it was not properly considered by the Court below.

8. In order to buttress his submissions, the learned counsel for the appellant relied on the decision of the Honourable Supreme Court in the case of (Ashok Kumar Jain vs. Sumati Jain) reported in (2003) 14 Supreme Court Cases 123 wherein it was held that it is unlawful on the part of the appellant/husband to contract a second marriage during the pendency of the Original Petition filed by him for dissolution of the marriage solemnised with the respondent/wife. Therefore, it was held that appellant/husband has not only subjected the respondent/wife to matrimonial cruelty but also brought a situation whereby the respondent/wife was made to desert his matrimonial company. Thus, it was held that the appellant/husband had committed constructive desertion of the respondent/wife. It was therefore held by the Honourable Supreme Court that the appellant/husband was trying to take advantage of his own wrong and he is not entitled for a decree

of divorce as prayed for. For the very same proposition, the learned counsel for the appellant/wife also relied on the decision of the Honourable Supreme Court in the case of (Chetan Dass vs. Kamla Devi) reported in AIR 2001 Supreme Court 1799.

9. The learned counsel for the appellant further relied on the decision of the Division Bench of this Court in the case of (Jayakumari vs. Balachander) reported in (2010) 5 MLJ 475 wherein it was held that the acquittal of the husband and his family in the criminal proceedings initiated by the wife has no relevance for deciding the Original Petition filed by either of the spouse. In para-34 of the said Judgment, it was held as follows:-

"34. The trial Court took the view that accusations and allegations of dowry harassment amounts to cruelty. In our considered view, the approach of the trial Court is erroneous and cannot be endorsed with. While considering the accusations, regard must be had to the context in which they are made. When there was demand of dowry and ill-treatment, on that account, necessarily, respondent has to lodge a complaint. If that is to be taken as cruelty, it would amount to allowing the petitioner to take advantage of his own wrong. As per Section 23 (a), for granting any relief under the Hindu Marriage Act, the party should not be allowed to take advantage of own wrong."

10. The learned counsel for the appellant also relied on the decision of the Honourable Supreme Court in the case of (Raj Talreja vs. Kavita Talreja) reported in (2017 (4) CTC 208) wherein it was held as follows:-

"10. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act (for short "the Act"). 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 levelling false accusations against the other spouse would be an

act of cruelty...

11. By relying on the above decisions, the learned counsel for the appellant would contend that the respondent was not subjected to any matrimonial cruelty, as has been alleged by him. The Family Court, without properly considering the evidence made available has jumped to a hasty conclusion that the respondent was harassed and subjected to matrimonial cruelty by the appellant. The learned counsel for the appellant therefore prayed for setting aside the order passed by the Family Court and thereby allowing this appeal.

12. Per contra, the learned counsel for the respondent would vehemently contend that the Family Court is wholly justified in concluding that the appellant has given repeated complaints, one after the other, against the respondent and his family members. It is not as if the appellant has given only one complaint on 08.04.2003 against the respondent and his family members. At first, on 28.04.2001, the appellant has given a complaint to the All Women Police Station, Salem complaining that she was beaten by the respondent and his family members, based on which the respondent and his family members were enquired by the police authorities. Of course, this complaint was later withdrawn by the appellant at the behest of her well wishers and family members and thereafter, the appellant and the respondent lived together. Subsequently, on 25.08.2001, the appellant has given a complaint alleging that the respondent and his family members have demanded dowry and harassed her. On the basis of such complaint, an enquiry was conducted and the appellant and the respondent were advised to lead a peaceful life. This time, a separate residence was set up and the appellant and the respondent resided there. Even thereafter, on 17.02.2002, the appellant has given a complaint alleging that the respondent attacked her and caused bleeding injury. On the basis of such complaint, a case was registered and it was taken on the file as C.C. No. 113 of 2002 on the file of the Judicial Magistrate No.5, Salem. In this case, the respondent was arrested and remanded to judicial custody. After 3 days of incarceration, the respondent was let out on bail. Ultimately, the case in C.C. No.113 of 2002 ended in acquittal of the respondent.

13. According to the counsel for the respondent, notwithstanding the above complaints, the appellant has given another complaint against the respondent and his family alleging that the respondent had contracted a second marriage with another girl and their family members were instrumental for commemorating such marriage. On the basis of such complaint, a case was registered for the alleged offence punishable under Section 494, 498-A and 406 of IPC and it was taken on file as

C.C. No. 851 of 2004 on the file of Judicial Magistrate No.5, Salem. Upon registration of the case, the respondent and his family members have filed anticipatory bail. While the brother of the respondent was released on bail after his arrest, the respondent surrendered before the concerned Court and let out on bail. Thereafter, the appellant has filed CMP No. 5779 of 2005 in C.C. No. 351 of 2004 on the file of Judicial Magistrate No.5, Salem for alteration of the Sections of the Indian Penal Code for which the respondent and his family members are being tried. During the pendency of the above CMP No. 5779 of 2005, the appellant has filed Criminal Original Petition No. 21830 of 2005 before this Court to direct the learned Judicial Magistrate No.5, Salem to alter the sections of the Indian Penal Code in C.C. No. 351 of 2004 and to direct the investigation officer to file a fresh investigation in to the complaint given by her. This Court, by an order dated 24.08.2005 dismissed the Crl.OP No. 21830 of 2005 filed by her. Even during the pendency of the Crl.OP No. 21830 of 2005, the appellant has given a complaint to the District Superintendent of Police, Salem..

14. Above all, the appellant and his family members have beaten up the respondent and his brother on 12.09.2002, forcibly made them to attend a Panchayat in which the respondent was made to sign an undertaking admitting the second marriage he had contracted with one Thirumagal, to file a petition for dissolution of the second marriage he had caused with the said Thirumagal and also to withdraw the Original Petition filed by him to dissolve the marriage solemnised with the appellant. Immediately, within two days, on 14.09.2002, the respondent caused a legal notice stating the circumstances under which he was made to give an undertaking and that the undertaking will not bind him. On receipt of the notice dated 14.09.2002, a reply notice dated 23.09.2002 was sent by the appellant through her counsel. According to the counsel for the respondent, the manner in which complaints have been given by the appellant, the conduct of the criminal proceedings against the respondent and his family members, the civil suit filed by the appellant along with the minor son would speak volumes about the manner in which the respondent was subjected to harassment, mental agony and torture and such an action perpetrated by the appellant is nothing short of cruelty. It is submitted by the counsel for the respondent that the appellant forced the respondent to come and live with her in her parents house and on his refusal, she had given false and frivolous complaints against the respondent and his family members to exert pressure on the respondent to make the respondent to comply with her unlawful demands. The respondent had suffered enough at the instance of the appellant and there is no scope for reunion among the appellant and the respondent. The marriage life between the appellant and the respondent had irretrievably broken beyond repair and therefore,

the counsel for the respondent prayed for dismissal of this appeal.

15. According to the counsel for the respondent, dehors the criminal proceedings initiated against the respondent and his family members, the appellant along with the minor son, have also filed a suit in O.S. No. 266 of 2005 for partition of the joint family properties of the respondent and his family before the Sub Court, Salem. Above all, claiming maintenance the appellant has filed MC No. 35 of 2008 before the Family Court, Salem. Subsequently, she has filed CMP No. 112 of 2013, CMP No. 88 of 2014, CMP No. 103 of 2015 and CMP No. 35 of 2016 claiming arrears of maintenance in which maintenance was also paid by the respondent from time to time, as directed by the Family Court. According to the counsel for the respondent, the above cases filed by the appellant would only indicate that her intention is only to harass the respondent and his family members and to bring disrepute to the family and there was no intention on her part to join the matrimonial company of the respondent. This is also evident that even though the appellant has filed several cases, before the Civil as well as Criminal Forum, till date, she has not filed any petition for restitution of conjugal rights, as contemplated under Section 9 of The Hindu Marriage Act.

16. In order to lend support to his contentions, the counsel for the respondent relied on the decision of the Honourable Supreme Court in the case of (Durga Prasanna Tripathy vs. Arundhati Tripathy) reported in (2005) 7 Supreme Court Cases 353 wherein the Honourable Supreme Court had observed that the wife had given a complaint before the Mahila Commission alleging that the husband and her mother-in-law have demanded dowry. Such a complaint was given after 7 years of marriage and soon after receipt of a notice from the Family Court in the application filed by the husband under Section 13 of The Hindu Marriage Act, for dissolution of the marriage. In those circumstances, the Honourable Supreme Court held that the wife not only treated the husband with cruelty but also deserted him without any just or sufficient cause.

17. The learned counsel for the respondent also relied on the decision of the Honourable Supreme Court in the case of (Parveen Mehta vs. Inderjit Mehta) reported in (2002) 5 Supreme Court Cases 706 wherein it was held in Para No.22 as follows:-

"22. Judged in the light of the principles discussed above, what we find is that right from the beginning the matrimonial relationship between the parties was not normal; the spouses stayed together at the matrimonial home for a short period of about six months; the respondent had been trying to persuade the appellant and her parents to agree to

go for proper medical treatment to improve her health so that the parties may lead a normal sexual life; all such attempts proved futile. The appellant even refused to subject herself to medical test as advised by the doctor. After 21.06.1987, she stayed away from the matrimonial home and the respondent was deprived of her company. In such circumstances, the respondent who was enjoying normal health was likely to feel a sense of anguish and frustration in being deprived of normal cohabitation that every married person expects to enjoy and also social embarrassment due to the behaviour of the appellant. Further, the conduct of the appellant in approaching the police complaint against her husband and his parents and in not accepting the advice of the superior judicial officer Mr. S.K. Jain and taking a false plea in her case that she had conceived but unfortunately there was a miscarriage, are bound to cause a sense of mental depression in the respondent. The cumulative effect of all these on the mind of the respondent, in our considered view, amounts to mental cruelty caused due to the stubborn attitude and inexplicably reasonable conduct of the appellant."

18. Further reliance was made to the decision of the Honourable Supreme Court in the case of (A. Jayachandra vs. Aneel Kaur) reported in (2005) 2 Supreme Court Cases 22 wherein in para No.16, 17 and 18, it was held as follows:-

"16. The matter can be looked at from another angle. If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct. In the instant case, after filing of the divorce petition, a suit for injunction was filed, and the respondent went to the extent of seeking detention of the appellant. She filed a petition for maintenance which was also dismissed. Several caveat petitions were lodged and as noted above, with wrong address. The respondent in her evidence clearly accepted that she intended to proceed with the execution proceedings, and prayer for arrest till the divorce case was finalised. When the respondent gives priority to her profession over her husband's freedom, it points unerringly at disharmony, diffusion and disintegration of marital unity, from which the Court can deduce about irretrievable breaking of marriage.

17. Several decisions, as noted above, were cited by learned counsel for the respondent to contend that even if marriage has broken down irretrievably decree of divorce cannot be passed. In all these cases, it has been categorically held that in extreme cases the court can direct dissolution of marriage on the ground that the marriage had broken down irretrievably as is clear from para 9 of Shyam sundar case (shyam sundar kohli vs. sushka kohli) (2004) 7 SCC 747. It was noted that husband was leading adulterous life and he cannot take advantage of his wife shunning his company. Though the High Court held by the impugned judgment that the said case was similar, it unfortunately failed to notice the relevant factual difference in the two cases. It is true that irretrievable breaking of marriage is not one of the statutory grounds on which court can direct dissolution of marriage, this Court has with a view to do complete justice and shorten the agony of the parties engaged in long-drawn legal battle, directed in those cases dissolution of marriage. But as noted in the3 said cases themselves, those were exceptional cases.

18. In the aforesaid legal and factual background, the inevitable conclusion is that the appellant is entitled to a decree of divorce and we direct accordingly."

19. The learned counsel for the respondent also placed reliance on the decision of the Full Bench of the Honourable Supreme Court in the case of (Naveen Kohli vs. Neela Kohli) reported in (2006) 2 MLJ 241 (SC) wherein in para No.15 it was held as follows:-

"15. This clearly demonstrates the respondent's deep sense and intense feeling of revenge. The respondent in her statement had also admitted that she had filed a complaint in the Women Cell, Delhi in September 1997. According to the appellant, the respondent had filed a complaint No.125 of 1998 against the appellant's lawyer and friend alleging criminal intimidation which was found to be false.

16. According to the appellant, the respondent filed a forged complaint under Section 197, 198 of the Companies Act before the Company Law Board, New Delhi and in the affidavit of the respondent, she stated that the appellant was immoral, alcoholic and was having affairs with numerous girls since marriage. She also called him a criminal, infidel,

forger and her manager to denigrate his position from the proprietor to an employee of her company.

17. The appellant also mentioned that the respondent filed a false complaint in Cae NO. 1365 of 1988 using all kinds of abuses against the appellant.

18. On 08.07.1999, the respondent filed a complaint in the Parliament Street Police station, New delhi and made all efforts to ensure the appellant's arrest with the object of sending him to jai. The appellant was called to the police station repeatedly and was interogated by the police and only after he gave a written reply and the matter on scrutiny was found to be false, the appellant with great difficulty was able to save himself from imprisonment....

.....

89. In view of the fact that the parties have been living separately for more than ten years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. a marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond."

20. By placing reliance on the aforesaid decisions, the learned counsel for the respondent would contend that by reason of the complaints given by the appellant against the respondent and his family members, making the respondent and his family members to litigate each and every one of the cases filed by the appellant, the respondent was subjected to frustration, mental agony and harassment. By reason of the filing of the civil as well as criminal cases by the appellant against the respondent and his family members, the matrimonial relationship between them had been broken leaving no scope for their union. In such circumstances, the learned counsel for the respondent prayed for dismissal of the appeal.

21. We have heard the counsel for both sides at length and perused the materials placed before us. As we have narrated the

factual matrix of the case and counter case of both sides, we refrain ourselves from dealing with the same any further in this appeal. However, for the purpose of disposal, we reiterate certain facts, which are absolutely necessary.

22. It is an admitted fact that the marriage between the respondent and the appellant was solemnised on 22.05.1994 and due to such wedlock, a male child was born on 24.11.1995. According to the respondent, after marriage, he and the appellant lived in his house along with his parents and brother as an undivided joint family. However, from the date of marriage, the appellant harassed and nagged the respondent to set up a separate residence, but it was refused by the respondent. In this context, wordy quarrel emanated between the appellant and the respondent. While so, on 28.04.2001, the appellant has given a complaint to the All Women Police Station, Salem alleging that the respondent and his family members have physically assaulted her. On the basis of such complaint, an enquiry was conducted and ultimately, at the intervention of the well wishers of the appellant, the appellant withdrew the said complaint. After the withdrawal of the complaint, the appellant and the respondent resumed the marital life in the house of the respondent. Subsequently, on 25.08.2011, the appellant had once again given a complaint to the All Women Police Station, Salem alleging that the respondent and his family members have demanded dowry. On the basis of the complaint dated 25.08.2011, an enquiry was conducted and the respondent was advised to live separately by taking a house for rent to avoid any further controversy. Accordingly, the respondent had taken a house for rent and resided separately with the appellant. According to the respondent, even after shifting the matrimonial home to the rented house, the appellant indulged in wordy quarrel with him and abused him. In fact, the appellant alleged that the respondent is having an illicit intimacy with his elder brother's wife and thereby caused harassment to the respondent. She also threatened to commit suicide by swallowing sleeping pills and would write a letter implicating the respondent for her death. Such an act on the part of the appellant, according to the respondent, had caused him enormous mental stress and strain and he had undergone sleepless night. In order to prove these averments, the respondent also examined himself as PW1 and marked documentary evidence to substantiate the same.

23. Further, on 17.02.2002, the appellant had once again given a complaint against the respondent alleging that he had physically assaulted and caused bleeding injury to her. On the basis of this complaint, a case was registered and after investigation, a final report was filed which was taken on file as C.C. No. 13 of 2002 on the file of the learned Judicial Magistrate No.5, Salem. In this case, the respondent was

remanded to judicial custody and eventually he was released on bail after three days. After trial in C.C. No. 113 of 2002, the respondent was acquitted by a Judgment dated 03.06.2002, marked as Ex.P2. This judgment dated 03.06.2002 has not been challenged by the appellant.

24. It appears that as the appellant could not succeed in getting a judgment of conviction against the respondent, she has given yet another complaint dated 08.04.2003, Ex.P5 before the Kondalampatti Police Station against the respondent and his family alleging that the respondent had contracted a second marriage during the subsistence of his marriage with her and that the brother of the respondent has arranged the said marriage. Upon registration of a case, the respondent and his brother have filed Petitions seeking anticipatory bail and they were dismissed. Subsequently, the brother of the respondent was arrested and thereafter he came out on bail, as could be seen from Ex.P6, order dated 02.05.2003 in Crl.M.P. No. 1187 of 2003 on the file of Judicial Magistrate No.5, Salem. Subsequently, the respondent surrendered before the court and obtained a bail vide order dated 06.05.2003 passed in Crl.M.P. No. 1223 of 2003, Ex.P7. As the respondent and his brother have obtained bail, the appellant has filed CMP No. 5779 of 2005 in C.C. No. 351 of 2004 before the Judicial Magistrate No.5, Salem for alteration of the Sections for which the case was registered, as could be evident from Ex.P10 dated 06.10.2005. In the said petition, the respondent has filed a counter affidavit on 25.12.2005, which was marked as Ex.P11. Notwithstanding the same, the appellant has filed Crl.OP No. 21830 of 2005 before this Court seeking for a direction to alter the section for which C.C. No. 351 of 2004 was filed by the prosecution and to issue a direction for conducting a fresh investigation against the respondent and his brother. By order dated 24.08.2005, this Court dismissed Crl.OP No. 21830 of 2005.

25. During the pendency of Crl.OP No. 21830 of 2005, the appellant has given a complaint dated 01.08.2005 to the District Superintendent of Police, Salem, which was marked as Ex.P12, alleging that she was subjected to matrimonial cruelty at the instance of the respondent and his family. The fact remains that when the complaint dated 01.08.2005 was given by the appellant, she was living separately and was not living along with the respondent and her family.

26. According to the respondent, soon after the appellant deserted his matrimonial company, on 12.09.2002, he and his brother were beaten up by the appellant and her family members and they were forcibly made to attend a Panchayat. During the course of such Panchayat, the respondent was made to sign an undertaking to the effect that he will file appropriate petition

to dissolve the marriage solemnised between him and one Thirumagal and also withdraw the present Original Petition filed for dissolution of marriage, being FCOP No. 32 of 2002 against the appellant. This undertaking said to have been given by the respondent was marked as Ex.R2 before the Family Court. According to the respondent, he was coerced, threatened and made to sign such an undertaking and it was not voluntary. Therefore, the respondent, through his counsel had sent a notice dated 14.09.2002, under Ex.P8 to the appellant and the Panchayatars who convened a Panchayat and reiterated that the so-called undertaking given by him in the presence of Panchayatars will not bind him in any manner. On receipt of the notice dated 14.09.2002, the appellant has given a reply on 23.09.2002, marked as Ex.R3. Subsequently, on 25.09.2002, the Panchayatars have also sent a reply (Ex.P4) to the notice dated 14.09.2002 sent by the respondent. On the same day namely 14.09.2002, when the respondent had sent a notice to the appellant, the appellant had given a complaint dated 14.09.2002 to the District Superintendent of Police, Salem.

27. On a cumulative reading of the complaints given by the appellant against the respondent and his family, it is glaringly evident that the attempt on the part of the appellant in giving complaints after the complaints have been proved, as pointed out by the Family Court and thereby the appellant had subjected the respondent to acute mental agony, mental disturbance and harassment. On going through the complaints, it can be concluded that those complaints are not intended to join the matrimonial company of the respondent and to lead a happy and blissful life, but they are meant to wreck vengeance against the respondent and to cause harassment to him. If it is the intention of the appellant to join the matrimonial company of the respondent, she could not have given the aforesaid complaints against the respondent and his family members. In fact, on the basis of the complaint given by the respondent, which culminated in filing the charge sheet in C.C. No. 113 of 2004, the respondent was arrested and incarcerated for 3 days before being let out on bail. Similarly, on the basis of another complaint given by the respondent, based on which a charge sheet was filed and taken on file as C.C. No. 351 of 2004, the respondent surrendered before the Judicial Magistrate No.5 and was released on bail. It is also note worthy to mention that C.C. No. 113 of 2002 ended in acquittal against which the appellant did not prefer any appeal. When once the respondent was arrested and remanded to judicial custody on the basis of a false or frivolous complaint preferred by the appellant, the matrimonial relationship would definitely get strained and the chance for re-union becomes impossible. The matrimonial relationship will get widened and thereafter, the husband cannot be expected to take back the wife to resume the

marital life. As observed by the Honourable Supreme Court in the case in (Durga Prasanna Tripathy vs. Arundhati Tripathy) reported in (2005) 7 Supreme Court Cases 353 the appellant and the respondent have spent their prime time and valuable time in litigation before the Civil and Criminal Forum and therefore also, there cannot be any resumption of marital life between them.

28. Thus, on an over all assessment of the oral and documentary evidence adduced before the Family Court, we are of the firm view that the respondent had established that he had suffered enough at the instance of the appellant, was made to run from Police Stations to the Court to prove his innocence and thereby he was subjected to sheer harassment and mental cruelty. The conduct of the appellant in the present case, in repeatedly giving complaint after complaint, in our opinion would fall within the scope and ambit of 'cruelty' as indicated in Section 13 (1) (i-a) of The Hindu Marriage Act. Therefore, we hold that the respondent is entitled for a decree of divorce on the ground of cruelty.

29. The learned counsel for the appellant, by relying upon the decision of the Division Bench of this Court in the case of (Jayakumari vs. Balachander) reported in (2010) 5 MLJ 475 mentioned supra, would contend that criminal complaints given by the appellant has nothing to do with the matrimonial proceedings and they need not be taken into account for the purpose of dissolving the matrimonial tie. At the outset, we cannot adopt a straight jacket formula and it depends upon facts and circumstances of each case. In the above said case, the Division Bench of this Court had an occasion to consider that based on the complaint given by the wife alleging that the husband and her in-laws have demanded dowry and harassed her, criminal proceedings were launched and the husband and her in-laws were convicted. However, on appeal, the conviction and sentence was reversed. The Division Bench also took note of the fact that during the pendency of the appeal, the husband admitted having re-married another girl. In those circumstances, the Division Bench held that the criminal case given by the wife cannot be construed as an attempt to inflict matrimonial cruelty on the husband and merely because the husband and in-laws were acquitted by the appellate Court, it will not be an embargo for taking an independent decision in the matrimonial proceedings. In the present case, as mentioned above, we find that multiple number of complaints have been given by the respondent/wife for one reason or the other and thereby the respondent/husband and his family were made to suffer immensely. Above all, the appellant and her men, on 12.09.2002, forced the respondent to give an undertaking much to his detriment. This is substantiated by the respondent by

sending a notice on 14.09.2002 not only to the appellant but also to those who conducted the panchayat. These facts were rightly appreciated by the Family Court while granting a decree of divorce on the ground of cruelty. The Family Court is justified in holding that by virtue of the repeated complaints given by the appellant, the respondent was subjected to acute mental agony and hardship and on that ground he is entitled for a decree of divorce. In such circumstances, the decision rendered by the Division Bench of this Court mentioned above cannot be made applicable to this case.

30. In the result, we confirm the Judgment and Decree dated 11.12.2007 made in F.C.O.P. No. 32 of 2002 on the file of Family Court, Salem and consequently, the Civil Miscellaneous Appeal filed by the appellant is dismissed. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Presiding Officer
Family Court
Salem
2. The Section Officer,
VR Section, High Court,
Madras-104 (2 Copies)

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No.76251

+1cc to Mr.R.Nelliyappan, Advocate, S.R.No.76276

PP(CO)
CS/21/01/2019

CMA.No.1174 of 2008

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