

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.04.2018

Pronounced on : 11-07-2018

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH  
and  
THE HONOURABLE MR. JUSTICE P.D. AUDIKESAVALU

Civil Miscellaneous Appeal Nos. 936, 1121, 1122 and 1271 of 2012  
and

M.P. Nos. 1 of 2012 in CMA No. 936 of 2012

M.P. No. 1 of 2012 in CMA No. 1271 of 2012

C.M.P. Nos. 5334 and 5335 of 2018 in CMA No. 936 of 2012

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CMA No. 936 and 1271 of 2012

R. Sridharan ... Appellant

Versus

R. Sukanya ... Respondent

CMA No. 1121 and 1122 of 2012

R. Sukanya ... Appellant

Versus

R. Sridhar ... Respondent

CMA No. 936 of 2012:- Appeal filed under Section 19 of The Family Courts Act against the Judgment and Decree dated 16.03.2012 passed in FCOP No. 569 of 2004 on the file of Principal Family Court, Chennai

CMA No. 1121 of 2012:- Appeal filed under Section 19 of The Family Courts Act against the Order and Decreeal Order dated 16.03.2012 passed in I.A. No. 2438 of 2011 in OP No. 569 of 2004 on the file of Principal Family Court, Chennai

CMA No. 1122 of 2012:- Appeal filed under Section 19 of The Family Courts Act against the Order and Decreeal Order dated 16.03.2012 passed in I.A. No. 2437 of 2011 in OP No. 569 of 2004 on the file of Principal Family Court, Chennai

CMA No. 1271 of 2012:- Appeal filed under Section 19 of The Family Courts Act against the Decree and Judgment dated 16.03.2012 passed in I.A. No. 2437 of 2011 in OP No. 569 of 2004 on the file of Principal Family Court, Chennai

CMA No. 936 and 1271 of 2012

For Appellant : Mrs. K.M. Nalinishree  
For Respondent : Mr. N. Ramesh

CMA No. 1121 and 1122 of 2012

For Appellant : Mr. N. Ramesh  
For Respondent : Mrs. K.M. Nalinishree

COMMON JUDGMENT

R. Subbiah, J

As all the four Civil Miscellaneous Appeals arise out of one and the same order passed by the Family Court, Chennai besides the parties to the appeals are also the same, these appeals are taken up for hearing together and are disposed of by this common Judgment.

2. For the sake of convenience, the parties shall be referred to as per their litigative status in CMA No. 936 of 2012, as appellant and respondent.

3. C.M.A. No. 936 of 2012 has been filed by the appellant/husband praying to set aside the decree and Judgment dated 16.03.2012 passed in FCOP No. 569 of 2004 on the file of Principal Family Court, Chennai. The said FCOP No. 569 of 2004 was filed by the respondent/wife to dissolve the marriage solemnised between her and the appellant on 17.04.2002 on the ground of cruelty. The Family Court, by the said Judgment and Decree dated 16.03.2012 in FCOP No. 569 of 2004, granted a decree of divorce dissolving the marriage solemnised between the appellant and the respondent on 17.04.2002.

4. During the pendency of FCOP No. 569 of 2004, respondent has filed I.A. No. 2437 of 2011 under Section 25 of The Hindu Marriage Act seeking permanent alimony of Rs.5 crores. By the very same Judgment and Decree dated 16.03.2002, the Family Court, while granting a decree of divorce, partly allowed I.A. No. 2437 of 2011 filed by the respondent/wife by directing the appellant/husband to pay a sum of Rs.40 lakhs to the respondent/wife as against the sum of Rs.5 crores claimed by

her. Challenging the said order dated 16.03.2002 in I.A. No. 2437 of 2011 in FCOP No. 569 of 2004, appellant has filed CMA No. 1271 of 2012.

5. The respondent has also filed I.A. No. 2438 of 2011 before the court below under Section 27 of The Hindu Marriage Act seeking to issue appropriate direction to the appellant to return all the articles listed in the schedule of the Petition. The Family Court, by the Order dated 16.03.2012, dismissed the said application, which is questioned by the respondent in C.M.A. No. 1121 of 2012.

6. Not being satisfied with the quantum of permanent alimony granted by the court below in and by the Judgment dated 16.03.2012, the respondent has filed C.M.A. No. 1122 of 2012 and prayed to direct the appellant to pay a sum of Rs.5 crores as permanent alimony as against the sum of Rs.40 lakhs awarded by the court below.

7. Brief facts, which are necessary for disposal of these appeals, as could be culled out from the Petition in F.C.O.P. No. 569 of 2004 filed by the respondent/wife are as follows:-

8. (i) According to the respondent, she is a film actress and acted in many films in Tamil, Telugu, Kannada and also Hindi. She was also a recipient of State awards conferred by the Government of Tamil Nadu for her best acting performance in Tamil films. The appellant was working in a Software Company at United States of America. According to the respondent, the family of the respondent knew the family background of each other as, the appellant, during his school days, was living within the vicinity of the respondent's residence. As the family of the respondent knew about the family background of the appellant, the elders of family decided to solemnise the marriage between the appellant and the respondent. Both the families agreed to conduct a betrothal function and accordingly, a simple betrothal function was commemorated in the residence of the respondent at Chennai. At the time of the betrothal function, the appellant was in United States of America and he did not participate. Thereafter, the marriage between the respondent and the appellant was solemnised on 17.04.2002 at Balaji Temple, Bridge Water, New Jersey, United States of America, as per Hindu rites and customs, in the presence of elders and friends of both the families. After the marriage, for the purpose of getting visa for the respondent, the appellant registered the marriage on 30.07.2002 in United States.

(ii) It is the case of the respondent that the matrimonial life was by and large peaceful and blissful when she was residing along with the appellant in United States of America. For a few weeks after the marriage, the parents of the

respondent also came and stayed along with the respondent in the same flat in United States of America. According to the respondent, within a few weeks of the marriage, she came to know about the illegitimate relationship, which the appellant had with another woman. The respondent discovered such relationship on reading a letter addressed to the appellant by one of his girl friends by e-mail on 03.05.2002. According to the respondent, the contents of the letter had shocked her. The respondent also informed her parents about the contents of the letter and the fact that the said girl is residing at a place which takes an hour's drive from the house where the respondent was residing. As per the advise of her parents, the respondent invited the girl to her house for a dinner along with her husband. Initially, the girl did not accept the invitation and after much persuasion, she came for a dinner along with her husband. After the dinner, the father of the respondent asked the girl about the contents of the letter dated 03.05.2002. Immediately, she ran out of the house without even wearing her shoes. The appellant, who was sitting in the other room, was furious and started fighting with the respondent. However, finally, the appellant apologised to the respondent and begged to condone his behaviour.

(iii) It is the further case of the respondent that after the marriage, the appellant suggested the respondent to keep all her jewellery in a locker as it is not safe to keep the costly jewellery in the house. By saying so, the appellant had taken all the jewellery with him, kept it in a safety locker and retained the key with him. The respondent was also informed by the appellant that the locker facility was standing in the joint names of the appellant and the respondent, but the appellant neither handed over the second key to the respondent nor disclosed her about the whereabouts of the safety locker.

(iv) It is the further case of the respondent that the appellant purchased a new car and requested the respondent to practice driving the car inasmuch as the respondent was sitting at home without any work. On the highways, in the guise of imparting driving skills to the respondent, the respondent was made to drive at a very high speed sometime crossing 150 kilometer per hour which made the respondent almost nervous as it was an unfamiliar territory where she was made to drive the car at a great speed. The respondent, one day, protested in the middle of the driving and started to walk down the road. It is only thereafter, the appellant did not demand the respondent to practice driving.

(v) According to the respondent, few weeks after the marriage, the appellant brought his male friends and spent the whole week end in the house for which the respondent was made to cook for all of them. Such week-end parties continued throughout the night making the respondent nervous about her safety and health at every moment.

(vi) The respondent conceived and was getting all kinds of sickness due to the same. However, the appellant never had any sympathy towards her and wanted to terminate the pregnancy, instead of taking her to a good Doctor. The respondent was also made to starve for food and there are occasion where she was forced to eat excess food. According to the respondent, aborting the pregnancy in United States was a very sensitive issue and very few Doctors were willing to do the same, therefore, the appellant consulted the brother in law of the respondent Dr. Mangalam Sridhar, practicing in United Kingdom and used to get tips as to how to go about the same. Ultimately, the appellant convinced the respondent that they can have children after she got a permanent visa at United States and by saying so, the appellant took the respondent to a Doctor and got the pregnancy terminated and refused to show the records relating to the same.

(vii) It is the specific case of the respondent that as she was an actress by profession before her marriage, therefore, the appellant was curious to know about the savings she made and the property held and wanted her to transfer all the amount to the joint account. In this context, there were difference of opinion cropped up between the respondent and the appellant and on one occasion, the appellant confined the respondent in a room and after locking it went to his work place. Further, whenever the respondent contacted her parents or others, the appellant closely watched it and questioned her. The appellant also indulged in abusing the respondent and used words assassinating her character. The appellant more often questioned the respondent about her past career in films without any bonafide intention and thereby, she was subjected to acute mental agony and cruelty.

(viii) As the respondent was a well known Bharatha Natyam dancer, she accepted an offer made by a private Television Channel in India and to attend the said programme, she came down to Chennai, India, on 13.01.2003. After reaching India, the respondent revealed the cruel attitude of the appellant to her parents and they were shocked to hear it from the respondent. Further, after the respondent reached Chennai, the appellant did not make any contact with the respondent. On the contrary, he started sending e-mails containing false and malicious allegations against the respondent and her parents. In effect, in the e-mails sent by the appellant on 08.04.2003, 07.05.2003, 15.05.2003 and 16.05.2003, the appellant had abused, made false and derogatory allegations. Not satisfied with the same, the appellant also marked copies of those e-mails to the sister and sister's husband of the respondent residing at United Kingdom and unnecessarily dragged them into the matrimonial controversy. When they did not respond, the appellant also abused them with false and motivated allegations.

(ix) According to the respondent, she was invited for a cultural programme in United States of America between

25.04.2003 and 09.05.2003. When the appellant came to know about her visit to United States of America, he wanted to know the minute details of the programme. In the context of the participation of the respondent in the cultural programme, the appellant had written a letter on 11.04.2003 abusing the respondent besides stating that the mother of the respondent can also act in the Movies along with her. Further, in one of the programmes held on 03.05.2003 at Dallas (Texas), the appellant barged in to the room where the respondent was staying, without the permission of the Security Officer arranged by the organisation and menacingly advanced towards the respondent to attack her in the presence of her mother. Fortunately, the Security Personnel prevented any untoward incident on that day.

(x) It is the contention of the respondent that the appellant had sent her barrage of letters after she left United States during January 2013. In all the letters sent, the appellant abused and threatened the respondent for no reasons. The appellant also threatened the respondent that if she proceeded to go ahead with her career in films, he will have to backout of the marriage. In the e-mail addressed to the brother-in-law of the respondent on 15.05.2003, the appellant had stated that he cannot allow the respondent to have any film career in future. In the e-mail dated 24.05.2003, the appellant had given an ultimatum to the respondent to decide her future. In such circumstances, the respondent was constrained to send a letter dated 01.06.2003 listing out the mental cruelty inflicted by the appellant on her especially when the appellant threatened the respondent with legal action. Further, as the respondent came down to India in a hurry, she left all her belongings such as clothes, daily used jewellery, valuable gadgets and cash in foreign currency. Therefore, the respondent had written a letter dated 12.06.2003 demanding the appellant to hand over her belongings to her aunt Dr. Rajini in New York. The appellant sent a reply dated 13.06.2003 stating that if her aunt contacts him, he will hand them over or otherwise, he will hand over the same when he gets vacation to come over to India. However, during June/July 2013, when the appellant came down to India, he did not handover the belongings of the respondent to her. He only handed over a suit case to her father containing her old clothes in which the valuable jewels left by her in the matrimonial home were not available.

(xi) According to the respondent, on 05.07.2003, a meeting was arranged in the house of the respondent to patch up the differences which arose between the appellant and the respondent and it was attended by the relatives of the appellant and the advocate representing the appellant. Since the differences could not be patched up, it was decided to file a petition to dissolve the marriage by mutual consent. The counsel for the respondent was requested to prepare a draft petition which would be handed over to the counsel for the appellant, who was also present at the meeting. Accordingly, a

draft petition was given to the counsel for the appellant for approval. However, suppressing the decision taken to dissolve the marriage by mutual consent, the appellant issued a notice dated 08.07.2003 making untenable allegations against the respondent. In the notice dated 08.07.2003, the appellant took exception to the respondent having a film career and also accused her of having deserted him. When the notice dated 08.07.2003 sent by the appellant was in transit, the respondent demanded the return of her Mangal Sutra, expenses incurred for the Air Ticket for her return to India and amount incurred for her medical expenses. On the other hand, after collecting the draft petition to be filed in the Court, the appellant agreed to file the petition before his return to United States. However, he gave the copy of the said draft to Daily Thanthi Tamil Newspaper and planted a news that the appellant is being threatened to agree for divorce. The news item appeared in the Tamil Daily Dinathanthi on 11.07.2003. A similar news item was also published in Tamil Daily Malai Malar on 11.07.2003. On the next day, the media personnel requested the respondent to give her reaction to the news item, but the respondent refused to comment. Her refusal and denial was also reported in the Tamil daily Dina Malar, Malai Malar and Dinakaran on 12.07.2003. Thereafter, on 12.07.2003, the appellant gave wide publicity to the matrimonial discord between the spouse and gave his own version of the events. On 13.07.2003, the Tamil Daily Dinamalar published a Wall Poster with a caption "Why Suganya's Divorce? The husband breaks the news." and carried the interview of the appellant stating that it was a phone interview. Further, for the news item that appeared in Dailythanthi on 14.07.2003, the appellant had given a copy of the legal notice dated 08.07.2003 issued to the respondent and the contents of the notice dated 08.07.2003 was published verbatim. Similarly, very many stories touching the matrimonial relationship between the appellant and the respondent were published by Vikatan Internet News Magazine on 14.07.2003 thereby a wide publicity was given to the intricate matrimonial dispute between the appellant and the respondent whereby the respondent was put to shame and it had caused her disrepute. A cover story was also published in Tamil bi-weekly Nakeeran. Notwithstanding the above news items, the appellant had also supplied a marriage photograph of the appellant and the respondent which was prominently published as a cover story in Kumudham Reporter dated 20.07.2003. In the cover story published by the magazine, several allegations were made against the respondent. To crown all the evil, the appellant also given an interview to Dinamalar newspaper in which he had revealed about the abortion undergone by the respondent and the letter sent by the respondent's father on 23.07.2003. As the respondent is also a prominent Malayalam film star, on 03.08.2003 and 10.08.2003, publications relating to the matrimonial relationship between the appellant and the respondent was published in Malayalam film weekly called 'Nana'.

According to the respondent, by the continued tirade carried on by the appellant through the print media, the respondent and her family members were put to shame, hardship and disrepute and this had caused untold mental agony and hardship to the respondent. On 06.12.2003, the respondent sent a letter to the appellant and complained about his behaviour of appropriating her properties without any justification or any legal right. Finally, by a letter dated 28.12.2003, the respondent informed the appellant about their being separated for nearly a year and that she intended to bring the matrimony life to a permanent end. In the above circumstances, with the above averments, the respondent has filed the Petition before the Family Court for dissolution of the marriage on the ground of cruelty.

9.(i) Countering the averments made in the Original Petition, the appellant has filed a counter affidavit before the Family Court specifically contending that the Original Petition filed under Section 13 (1) (iii) of The Hindu Marriage Act is not maintainable because the appellant has become a citizen of the United States of America and the marriage was also performed in United States, hence, the provisions contained under Section 18 (1) of the Foreign Marriage Act, 1969 alone will apply. Therefore, for want of jurisdiction, the appellant prayed for dismissal of the Original Petition filed by the respondent.

(ii) According to the appellant, the marriage between him and the respondent was arranged between the elders of both the family. The proposal for marriage was made by the respondent and her parents by approaching the elder sister of the appellant by name Mrs. Radhika. The family of the respondent lived next door to the family of the appellant in Chennai and he knows the respondent from his childhood. The respondent and her family members used to visit appellant's house as the appellant's father was taking classes in Sanskrit including recitation of Vishnu Sahashranamam besides the appellant and the respondent joined Hindi class. As regards the proposal for marriage, the appellant's sister sought some time to consult with her family members, including the appellant. When contacted, the appellant informed his sister that if the respondent and her family members are satisfied with the alliance, he had no objection for marrying the respondent, provided she gives up her acting career in films. Thereafter, the respondent called the appellant over phone and agreed to give up her career in film. Thereafter, a betrothal function was commemorated in the house of the respondent at Chennai. Further, as per the request of the respondent and her family, the marriage was solemnised in such a manner that very close friends and family members participated. Even though the appellant preferred to have the marriage solemnised at Chennai especially when his mother could not undertake a journey to United States of America, the respondent and her parents insisted that the marriage be celebrated in United States of

America since the respondent did not want the public and others in the cine field to know about the marriage and that it should be kept as secret. Accordingly, the respondent and her family members came to United States of America and on 17.04.2002 the marriage was solemnised at Balaji Temple, New Jersey. The marriage was also registered on 30.07.2002 in the United States of America.

(iii) As regards the e-mail dated 03.05.2002, according to the appellant, it was created by the respondent and he has nothing to do with the e-mail. The respondent knows the password of the appellant and he stoutly denied that the said letter was addressed to him by a female friend. In fact, when the so-called female friend was invited for a dinner, the respondent and her father have showered abuse on them without ascertaining the facts properly. Thus, the appellant stoutly denied having any illicit relationship with any female, as alleged by the respondent in the Original Petition.

(iv) During January 2013, the respondent intended to visit India for participating in a television programme and the appellant did not resist it. Even though the respondent promised to return to the matrimonial home shortly, she did not return. Before leaving for India, the respondent insisted on the safe custody of the valuable jewellery and therefore, a locker was opened with Bank of America in the joint name of the appellant and the respondent and before proceeding to India, the respondent herself kept the jewels in the locker. The respondent is in possession of the second key and she knows the whereabouts of the Bank where the locker is maintained. Further, the jewels were given back to the respondent when the appellant came back to India. Thus, according to the appellant, he is not in possession of any of the valuables of the respondent.

(v) As regards the purchase of a car, since the respondent insisted on purchase of a new car for her, he purchased it and gifted it to the respondent. However, he never permitted the respondent to drive the car because she is not acquainted with the traffic rules in America. The appellant denied the allegation as incorrect that he asked the respondent to drive the car at a high speed in the highways, especially, as it is not possible to cross the speed limit in the United States and drive the vehicle at any speed, as desired. Similarly, the appellant denied the allegation that his friends visited his house and stayed there through the week-end. According to the appellant, it is a normal practice in the United States to meet during week ends and entertain them. In fact, the appellant had taken the respondent to similar week end parties at various places. Further, by reason of such week-end parties, the respondent was not subjected to hardship in any manner.

(vi) As regards the aborting of the pregnancy, it is contended by the appellant that when the respondent became

pregnant, the appellant was overwhelmed and happy. However, the respondent, on her own and against his will, had terminated the pregnancy purportedly on the advice of her parents that giving birth to a child would affect her career in cinema. In fact, the respondent, through her friends, got the address of the Clinic and admitted herself in Choice Medical Group in California when the appellant went to office. The respondent also signed a consent letter and utilised the insurance coverage of the appellant for her medical expenses. This is more so that in United States of America, husband or father of a female has no role to play in terminating the pregnancy. Thus, the appellant stoutly denied that he has nothing to do with the aborting of the pregnancy and it was at the sole discretion of the respondent.

(vii) According to the appellant, during the stay of the respondent at the matrimonial home, he had taken her to several places of tourist importance, fulfilled all her wishes befitting his status. He had even opened a bank account jointly in his name and in the name of the respondent with Bank of America so that the respondent did not suffer any financial crunch. The appellant showered all his love and affection towards the respondent and it was equally reciprocated by her during her stay at America. Therefore, according to the appellant, he never subjected the respondent to matrimonial cruelty in any form or manifestation and it is a sheer imagination on the part of the respondent to hurl abuses on him. The allegation that the appellant locked the respondent in a room and went to his work is an utter falsehood. It is not possible to lock the respondent inside the apartment as she could open the door from inside and come out. Further, telephone was accessible from all the rooms as there were intercom. Apart from that the respondent is also provided with a mobile phone. In other words, till January 2003 when the respondent left the matrimonial company of the appellant, she was happy and all her needs were fulfilled by the appellant. After January 2003, the respondent never returned back to the matrimonial home and stayed with the appellant and therefore, the question of the appellant inflicting matrimonial cruelty on her does not arise.

(viii) According to the appellant, even before the marriage, the respondent specifically agreed that she will not act in films. While leaving America during January 2003, the respondent only informed him that she had a programme in a private television channel in India. After reaching India, the respondent has given an interview in Podhigai Television Channel on the eve of Tamil New Years Day in which she has categorically stated that she is living happily with the appellant having settled down in United States of America. Even on 30.01.2003, the respondent had sent an e-mail stating that she was lucky to have the appellant as her husband. According to the appellant, after giving interview in the television channel on the eve of Tamil New Year Day, he was expecting the respondent to return

back to America, but she stayed in India for the reasons best known. While so, the appellant came to know through one Thony @ Thanthony that the respondent would be visiting United States for certain cine based programme and he asked her to inform the appellant of her programmes. Even though the respondent visited United States of America, she did not contact the appellant and kept him completely in dark about her visiting the matrimonial home. The appellant in fact attended one of the programmes performed by the respondent at Dallas in United States of America and he also asked the organisers to permit him to meet the respondent, who is his wife. Accordingly, during the intermission, the appellant met the respondent and presented her a ring as a token of his love and affection towards her and asked her to come to the matrimonial home, however, the respondent refused to join the appellant. Therefore, the question of the appellant barging into the room where the respondent is staying without the permission of the organisers is stoutly denied. Thereafter, during the first wedding anniversary on 17.04.2003, the appellant contacted the respondent over phone, but the parents of the respondent alone attended the phone call and stated that the appellant could not talk to her as she is busy in her acting career. It is in those circumstances, the appellant sent e-mail to the respondent and her relatives urging the respondent not to go back to her acting career once again.

(x) As regards the allegation that the appellant wanted the respondent to disclose her savings and the properties possessed by her, it is contended by the appellant that the appellant asked the respondent to execute a power of attorney in favour of her parents, while she was in America, to enable them to prosecute a Civil Case filed by the respondent prior to the marriage against a Tamil Channel claiming damages. It is in those circumstances, for the purpose of executing the power of attorney, certain details were sought for from the respondent. Further, the respondent, before the marriage, filed a suit in C.S. No. 562 of 1996 before this Court against Sun Television and Nakeeran, a Tamil Weekly and this would prove that even prior to the marriage, media personnel were writing cover stories and other write ups against the respondent. Therefore, the appellant, is in no way responsible for the media publishing several publications or write ups against the respondent nor did he supply any material particulars to the media personnel. In fact, the respondent herself disclosed about her personal life during the course of an interview given to Podhigai Television channel and it is on the basis of the same, several publications were made by the media against the matrimonial life. The appellant never contacted any media to inform about the intricacies in the matrimonial life. The appellant never instructed any journalists and media personnel to report about the matrimonial life nor had he given any interview to the media.

(xi) According to the respondent, during June 2003, when he came to India, a meeting was arranged and he went along with his relatives to see the respondent with the fond hope that she would mend her ways and join him. However the parents of the respondent started abusing the appellant in filthy language in the presence of their counsel. When this was pointed out, he asked the parents of the respondent to stay out. Even during such meeting, the appellant expressed his willingness to take the respondent back to the matrimonial home and to book flight tickets at any time, but the respondent did not reply. On the other hand, the counsel for the respondent informed the appellant that she was not willing to join the appellant but only wanted a decree of divorce as she is interested in continuing to act in films. The appellant did not agree and insisted only for re-union. The next day, the counsel for the respondent gave a draft petition purportedly to get the marriage dissolved by obtaining a decree of divorce by mutual consent, but the appellant did not consent for it. Thereafter, the appellant issued a notice through his advocate calling upon the respondent to return to the matrimonial home, but there was no reply. It was further stated in the counter statement that the appellant condoned the acts of the respondent and he is ready and willing to take her back to the matrimonial home. Therefore, the appellant prayed for dismissal of the Original Petition filed by the respondent for dissolution of marriage on the ground of cruelty.

10. Pending Original Petition before the Family Court, the respondent has filed I.A. Nos. 2437 of 2010 contending that she was a reputed actor and a Bharathanatyam Dancer. However, during the past six years, she could not concentrate on her profession due to the mental agony caused to her by the appellant, with the result, her career is lost and her income has come down substantially. Due to the matrimonial dispute between her and the appellant, her father was subjected to enormous mental agony and ultimately he died and therefore, she is presently staying with her mother. According to the respondent, the appellant is a software Engineer working in United States of America. Even as per the averment in the counter affidavit of the appellant in the main Original Petition, he is earning about Rs.45 lakhs per annum besides possessing movable and immovable properties. Presently, the income of the appellant would not be less than Rs.1,35,00,000/- annually besides he has sufficient investments in stocks and shares which would fetch him an annual income of Rs.2 crores. It was further contended that the appellant is duty bound to maintain her during the pendency of the Original Proceedings. The respondent is capable of paying a sum of Rs.5 crores to the respondent towards permanent alimony. Accordingly, the respondent prayed for issuing a direction to the appellant to pay a sum of Rs.5 crores as permanent alimony to the respondent.

The said application was contested by the appellant by filing a counter.

11. The respondent has also filed an application in I.A. No. 2438 of 2010 under Section 27 of The Hindu Marriage Act contending that on 13.01.2003, she came to India leaving all her belongings in the matrimonial home. The appellant also acknowledged the same in the e-mail dated 24.05.2003 that he would return back all the valuables left behind by her in the matrimonial home but he failed to return the same. At the time when the respondent went to the matrimonial home soon after the marriage, she was in possession of jewels which were worth Rs.10 lakhs at that time. While so, at the time of returning from United States of America, except some basic jewels such as Mangal Sutra and small items, all the other jewels were kept in the safety locker by the appellant in Bank of America, Sanjose. The appellant however did not handover the key of the locker. The appellant continues to retain those jewellers thereby committing criminal breach of trust. In such circumstances, the respondent prayed for issuing appropriate direction to the appellant to return back the jewels and other accessories, which are morefully listed in the schedule of the petition.

12. Before the Family Court, on behalf of the respondent, she examined herself as PW1 and one Agalaivan, Reporter of Kumudham Weekly, was examined as PW2 and Exs. P1 to P31 were marked. On the side of the appellant, he examined himself as RW1 and Exs. R1 to R-113 were marked. The Family Court, on appreciation of the factual matrix of the case, as pleaded by the respondent as well as the appellant, has framed 8 points for consideration and they are as follows:-

1. Whether the incidents alleged in the petition have been proved by the petitioner wife?

2. Whether the incidents proved are within the confines of cruelty?

3. Whether the petitioner is entitled to divorce on the ground of cruelty under Section 13 (1) (i-a) of The Hindu Marriage Act?

4. Whether the respondent is suffering from unsoundness of mind?

5. Whether the petitioner is entitled to divorce on the ground of mental disorder under Section 13 (1) (iii) of The Hindu Marriage Act?

6. Whether the claim of Rs.5 crores as permanent alimony is just and reasonable?

7. Whether the petitioner is entitled to return of articles mentioned in I.A. No. 2438 of 2011 from the respondent?

8. To what relief the petitioner is entitled to?'

13. For determining the matrimonial disputes involved between the respondent and the appellant, the Family Court has taken into account 15 instances and dealt with the same elaborately. The 15 instances taken into account by the Family Court are as follows:-

"1. After a few weeks of marriage in U.S.A., the petitioner happened to see the letters sent by E-mail dated 03.05.2002 to the respondent and found the respondent had all kinds of illegitimate relationship and the parents of the petitioner were shocked to know about the contents of the e-mail. The petitioner's parents who came down to U.S.A. After the above incident suggested to the petitioner to invite the women who sent the E-mail and her husband for a dinner in the house. After the dinner was over, the petitioner's father called the girl and questioned about the contents of the alleged letter and immediately thereafter she ran out of the house even without wearing her shoes. The respondent who was sitting in the other room got furious and started fighting with the petitioner.

2. The respondent used to bring lot of guests in the week end and insisted the petitioner to prepare food for all of them and the parties will continue throughout the night making the petitioner nervous.

3. The respondent who purchased a new car in USA insisted the petitioner to drive at a very high speed.

4. When the petitioner got conceived, the respondent never had any sympathy towards the petitioner and insisted to terminate her pregnancy at her cost and tortured her without providing any food and contrary to the above, the respondent also forced her to eat unbelievable quantities of food which only made the petitioner sick for days together. At the instance of the respondent, the petitioner got her pregnancy terminated.

5. The petitioner had a successful career in films before her marriage. Respondent wanted to transfer all the amounts that she earned into a joint account.

6. The respondent used to lock up the petitioner and making her lonely that increased her depression.

7. The respondent used to abuse the petitioner and used to pick up quarrel for trivial things and indulged in character assassination and the petitioner had no option but to escape from the clutches of the respondent.

8. The petitioner being a Bharatha Natyam dancer accepted an offer by a private TV channel in

India, came down to India on 13.01.2003. Thereafter, the parents of the petitioner at Chennai questioned the behaviour of the respondent over phone. The respondent avoided interaction with the parents of the petitioner and on the contrary, he started sending E-mails to the petitioner containing false and malicious allegations against her and her parents and thereby inflicting mental cruelty to the petitioner.

9. The petitioner was invited for a cultural program in USA starting from 25-04-2003 to 09-05-2003. The said programme were to have 12 shows to be performed from various cities in USA. In one of the programmes held on 03.05.2003 at Dallas, the respondent barged in without the permission of the Security Officer and menacingly advanced towards the petitioner to attack her in the presence of her mother and fortunately, the security personnel prevented the untoward incident happening on that day.

10. After the petitioner returned to India, the respondent started sending threatening E-mails that if she proceeded to go ahead with her career, he would back out of the marriage.

11. When the petitioner came to India in January 2003 in a hurry with a view to safeguard herself from the respondent, she left her personal belongings such as clothes, daily used jewelleryes and valuable gadgets and cash in foreign currency. The petitioner sent a e-mail letter dated 12.06.2003 asking him to hand over all the valuables belonging to her. When the respondent came to Chennai in June 2003, he did not hand over any valuable including the jewellery items to the petitioner, instead, he gave a suit case to her father containing old clothes.

12. On 05.07.2003, a meeting was arranged in the petitioner's friend house for amicable settlement by giving quietus to the marriage it was agreed in the meeting that the petition for divorce by mutual consent to be filed in an appropriate Court. Contrary to the above agreement, the respondent started abusing the petitioner and refused to sign in the mutual divorce petition and started sadistic vilification campaign against the petitioner.

13. The copy of the draft petition for mutual divorce was supplied by the respondent to the Tamil Newspapers viz., Dinathanthi, Dinamalar, Malaimalar and Dinakaran and planted a news by the respondent as if he was being threatened to agree for mutual divorce and the respondent had also given personal interview to Malai Malar with a view to give wide publicity to the matrimonial discard so as to malign the name of the petitioner since she is a cine star. The

petitioner has also supplied news to Nakeeran and unleashed the vilification campaign by supplying his marriage photograph of which he alone was in possession and he has also brought a cover story prominently published in the Tamil magazine "Kumudham Reporter" dated 20.07.2003. As the petitioner is the prominent Malayalam cine star, he also supplied news to Malayalam Weekly 'Nana' with a view to tarnish her name and fame.

14. When the petitioner was in USA with the respondent, she consulted about the behaviour of the respondent with a Psychiatrist known to her and she was told that the respondent may be suffering from Multiple Personality disorder and it would be difficult to lead a matrimonial life with him since the mental disorder is of such a kind that she cannot be expected to live with the respondent.

15. The respondent withheld the valuable jewelleries of the petitioner which caused her mental hardship."

14. The family Court discussed incident Nos. 1 to 11, 14 and 15 quoted above in extenso and concluded that Ex.P6, e-mail said to have been sent by a girl friend of the appellant to the appellant cannot be given much credence to conclude that the respondent herein was subjected to matrimonial cruelty especially when Ex.R35, the photographs taken during the subsistence of the matrimonial life indicates that the matrimonial life between the appellant and respondent was happy and blissful during the stay of the respondent at United States of America. In fact, the parents of the respondent also enjoyed their stay in the house of the appellant at United States of America, which is also revealed in Ex.R35, Photographs. The Family Court also placed reliance on Ex.R-37, letter sent by the respondent to her sister in which she had stated that she celebrated her birth day at United States of America, taken photographs on that day and that the appellant had taken her to Los Angels, San Francisco, Sandiago, Golden Gate etc., The family Court also concluded that the respondent aborted the pregnancy on her own and the appellant cannot be said to be instrumental for such abortion. The Family Court, taking into account the various letters exchanged between the appellant and the respondent through e-mail concluded that there is not enough material and evidence to show that the appellant inflicted mental or physical cruelty on the respondent herein and resultantly held that the respondent herein has not proved that she was subjected to matrimonial cruelty by the appellant in any manner. While dealing with incident Nos. 13 to 14, the family Court concluded, that those averments only show the hatred and rancour between the parties and consequently, the matrimonial

bond would no longer survive between them.

15. With respect to the jurisdictional issue raised by the appellant, the family Court has clearly pointed out that during the pendency of the Original Petition filed by the respondent, the appellant herein has filed Writ Petition No. 34838 of 2004 before this Court questioning the jurisdiction of the family Court to take up the Original Petition filed by the respondent for dissolution of marriage and it was dismissed by this Court. As against the same, the appellant has filed Writ Appeal No. 1181 of 2009 before the Division Bench of this Court and it was also dismissed on 09.07.2010 holding that the domicile of the appellant herein is immaterial since the wife/respondent is a permanent resident of Chennai. The appellant has also filed S.L.P. No. 20410 of 2010 before the Honourable Supreme Court and the same was also dismissed on 19.08.2010 with a direction to complete the case within a period of four weeks and therefore, the appellant is estopped from raising the issue relating to jurisdiction of the Family Court to entertain the Original Petition filed by the respondent.

16. As regards I.A. No. 2438 of 2011 filed by the respondent herein for return of articles, the family Court has pointed out that the respondent did not prove, by tangible evidence, as to how many items of jewellery have been presented to her at the time of marriage. It was further pointed out that to show the quantum of jewellery allegedly presented to the petitioner at the time of marriage, there must be some evidence to show that the list of jewellerries presented at the time of marriage. By holding so, the family Court concluded that the claim of the respondent for return of the schedule mentioned articles to her, cannot be countenanced, in the absence of any concrete evidence to show the list of jewellerries which were in her possession at the time of her marriage in United States of America.

17. As regards the application in I.A. No. 2437 of 2011 filed by the respondent under Section 25 of The Hindu Marriage Act for a direction to the appellant to pay her permanent alimony, the family Court, upon considering the evidence of the appellant herein as RW1, concluded that the appellant is in receipt of a fancy salary through his employment as Senior System Analyst in United States of America. On the other hand, the respondent herein had lost her prospects in cine world and she has no cine assignment. Therefore, the family Court allowed the application in I.A. No. 2437 of 2011 filed by the respondent under Section 25 of The Hindu Marriage Act by directing the appellant to pay a sum of Rs.40 lakhs towards permanent alimony to the respondent.

18. Assailing the order passed by the Family Court, the learned counsel appearing for the appellant/husband would vehemently contend that the marriage between the appellant and the respondent was solemnised on 17.04.2002 in Balaji Temple at Bridge Water, New Jersey, United States of America and the appellant and the respondent lived happily at United States of America. After the marriage, the appellant had visited several places of tourist importance in United States of America and the respondent also happily lived with the appellant. In order to fortify this, the learned counsel for the appellant relied on the various photographs, Ex.R35, taken during the birth day of the respondent celebrated at United States of America along with her parents who stayed there for a short period after marriage. Further, the respondent herself had written a letter to her sister under Ex.R37 stating that she had celebrated her birthday and took photographs. Further, she had stated in the letter that the appellant had taken her to Los Angeles, San Francisco, Sandigo, Golden Gate and other important places of visit in America. While so, for the first time, after marriage, the respondent alleged that the appellant had illicit intimacy with another woman by name Anu Iyer, on the basis of alleged letter dated 03.05.2002, Ex.P6 said to have been written by the said Anu Iyer to the appellant. In this context, there was a matrimonial rift between the appellant and the respondent. According to the counsel for the appellant, the e-mail dated 03.05.2002 was created by the respondent herself inasmuch as she knew the password of the appellant in his computer very well. This was clearly spoken to by the appellant in his deposition as RW1. In any event, the contents of the letter dated 03.05.2002 cannot be regarded as the one by which the respondent was subjected to matrimonial cruelty.

19. According to the counsel for the appellant, yet another instance cited by the respondent in the Original Petition is that she was asked to drive the car purchased by the appellant at a hectic speed by ignoring her safety. However, in order to falsify her own averment, the respondent in her cross-examination has stated that the appellant never permitted her to drive the car in United States of America. Further, the appellant, in his counter affidavit filed before the Family Court had clearly stated that he never permitted the respondent to drive the car because she did not possess a valid licence to drive a Car in United States of America besides that she is not acquainted with the traffic rules in America. The appellant went on to deny the said averment by stating that it is not possible to cross the speed limit in the United States and drive the vehicle at any speed, as desired. Therefore, it is submitted by the learned counsel for the appellant that the averments which constituted the original petition to show that the respondent was subjected to matrimonial cruelty has not been

proved by her. Similarly, the respondent alleged that she was made to cook food for the guests brought by the appellant on all week ends. Even this averment of the respondent has been belied by her own statement made in the cross-examination to the effect that on almost all the weekends, she was taken by the appellant to some important place and that is how she visited Disney World and various other places. Even otherwise, asking the respondent/wife to cook food for the friends brought by the appellant cannot come within the purview of matrimonial cruelty. Similarly, the various other averments made by the appellant that she was not taken care of by the appellant when she was pregnant was also found to be false by her own statement in the cross-examination wherein she has admitted that the appellant had taken the respondent to a hospital for clinical examination and she had even availed the benefits of insurance which stands in the name of the appellant to meet the medical expenses. Further, the appellant has stated in the counter that he had taken care of the respondent very well and provided her all comforts during her pregnancy. The appellant further stated that he had subjected the respondent to various medical examination to ensure her health and well being. Therefore, at no stretch of imagination, it could be said that the respondent was in any manner subjected to any form of cruelty. In fact, the respondent herself had given consent under Ex.R58 dated 27.06.2002 for her abortion before the Stars Medical Group which is also not disputed by her in her cross-examination as RW1. According to the counsel for the appellant, the averments made by the respondent to show that she was subjected to matrimonial cruelty are bald, vague and they are without any basis.

20. According to the learned counsel for the appellant, during January 2003, the respondent left the matrimonial home on a trip to India to participate in a television programme on 13.01.2003. Till such time the respondent left the matrimonial home, she has not made any complaint of harassment as against the appellant and it could be evident from Ex.R4 = Ex.R102, letter sent by the respondent herself by e-mail wherein she has praised the appellant for being her life partner and that she was lucky to have him as her husband. Even in the subsequent letter dated 15.03.2003, Ex.R44 = R106 sent by the respondent through e-mail, she has nothing to complain against the appellant. The learned counsel for the respondent also brought to the notice of this Court the letter dated 26.03.2003, Ex. R5 = R110 sent by e-mail, wherein the respondent expressed her eagerness to see the appellant soon in the matrimonial home. Even in the letter written thereafter and sent by e-mail on 11.03.2003, Ex.R10 = R105, the respondent expressed her satisfaction on conferment of award to the appellant by his employer for his best performance in his work. According to the counsel for the appellant, after the respondent left United States of America to India during January 2003, she did not join

the appellant in the matrimonial home. Therefore, it is contended by the counsel for the appellant that during her stay in the matrimonial home till January 2003, she was never subjected to any cruelty, much less matrimonial cruelty, while so, the Court below ought not to have granted a decree of divorce as prayed for by the respondent on the grounds of cruelty. When the respondent pleaded that she was subjected to matrimonial cruelty at the instance of the appellant, a duty is cast on her to prove the same to the satisfaction of the Court. On the contrary, the respondent failed to discharge her burden and in spite of such failure on the part of the respondent, the Family Court granted a decree of divorce and it calls for interference by this Court.

21. The learned counsel for the appellant would further contend that the respondent is bound to prove the allegations made by her in the Original Petition for dissolution of the marriage on the grounds of cruelty. Even though the Family Court concluded that the appellant did not inflict any matrimonial cruelty on the respondent when the appellant and the respondent were staying in the United States of America soon after the marriage and that the respondent failed to prove the allegations made by her in the original petition, yet, the Family Court erred in taking note of the subsequent developments that had taken place in this case. According to the counsel for the appellant, Family Court, without any basis or tangible evidence had concluded that the appellant, by reason of supplying the legal notice dated 08.07.2003 (Ex.P4) to the editor of Vikatan Internet news magazine, the translated version of which was published in Tamil Magazine on 14.07.2003, has indulged in character assassination of the respondent and thereby subjected her to acute matrimonial cruelty. Similarly, the Family Court erroneously concluded that the marriage photograph was furnished by the appellant to the reporter of Tamil Daily, which was also published in the Tamil Daily and thereby he tarnished the image, good will and reputation of the respondent as a cine star. According to the counsel for the appellant, the reliance placed on by the Family Court on certain instances to conclude that the respondent was subjected to matrimonial cruelty are unsustainable.

22. Further, according to the learned counsel for the appellant, the respondent has not substantiated her allegation that the appellant indulged in character assassination by supplying material documents to the news reporters. In this context, the appellant examined PW2, reporter of Kumudham publications to substantiate that it was the appellant who had supplied the material particulars to PW2 for the purpose of publication of the same in their weekly magazine. PW2 was cross-examined by the appellant with regard to Ex.P20, Kumudham book and P21, audio CD, which were marked subject to objection

by the appellant. During the cross-examination, PW2 admitted that there is no proof in writing for the source of the story published in Ex.R73 = P20, Kumudham reporter book. When Ex.P20 and P21 were marked subject to objection, they cannot be received in evidence contrary to Section 65 (b) of The Indian Evidence Act, which clearly states as to how evidence can be let in, in case of electronic record tapes. Unless the primary evidence on which the alleged compact disc was recorded, is produced before the Court, Ex.P21, audio CD cannot be looked into evidence and it is inadmissible in evidence. As regards the photographs used by PW2 in the course of publication of Ex.R73, Kumudham reporter book, it was admitted by PW2 in his cross-examination that Exs. R71 and R72, photographs, were taken from compilations available with Kumudham reporter office. In fact, on an earlier occasion, the respondent had dragged the visual media and a Tamil Weekly to the Court seeking damages for publication of her life story. In this context, the respondent also filed a suit in C.S. No. 562 of 1996 before this Court. Therefore, according to the counsel for the appellant, it cannot be said that the appellant was instrumental for the publications effected in the weekly magazine by supplying the material documents. In any event, these are subsequent developments which had taken place during the course of trial in the Original Petition and therefore, the Family Court ought not to have relied on the above instances to hold that the respondent was subjected to matrimonial cruelty at the instance of the appellant.

23. The learned counsel for the appellant would further contend that the Family Court placed heavy reliance on the deposition of PW2, reporter of Kumudham magazine and Ex.P21, compact disc marked through him. According to the counsel for the appellant, the Family Court erred in taking into account the conversation recorded in the original Audio Compact Disc without producing the original device in which the conversation was recorded. Questioning the admissibility of Ex.P21, compact disc, the learned counsel for the appellant would contend that without producing the original device which was used for recording the conversation, Ex.P21, compact disc, is inadmissible in evidence. In support of such contention, the learned counsel for the appellant relied on the decision of the Division Bench of this Court in the case of (Vijay Packaging (Dissolved Firm) represented by its former Partner Mr. R. Thiagarajan vs. Spectra Packs Private Limited and another) reported in 2002 (2) CTC 705 wherein it was held that the extract of the account books filed in Court, without producing the originals for comparison and also without explaining the reason for the non-production of the originals had been wrongly treated as admissible by the Courts below.

24. For the very same proposition, the learned counsel for the appellant also relied on the decision of the Honourable Supreme Court in the case of (Anvar P.V. vs. P.K. Basheer and others) reported in (2014) 10 Supreme Court Cases 473 wherein it was held in para No.17 that only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation resort can be made to Section 45-A of the Indian Evidence Act - opinion of Examiner of Electronic Evidence. Further, the Indian Evidence Act does not contemplate or permit the proof of an electronic record by oral evidence, if requirements under Section 65-B of the Evidence Act are not complied with as the law now stands in India. In the said Judgment, it was held as follows:-

"7. Electronic record produced for the inspection of the Court is documentary evidence under Section 3 of the Evidence Act, 1873 (hereinafter referred to as 'the Evidence Act'). The Evidence Act underwent a major amendment by Act 21 of 2000 (the Information Technology Act, 2000) (hereinafter referred to as "the IT Act"). Corresponding amendments were also introduced in the Penal Code (45 of 1860), the Bankers Books Evidence Act, 1891 etc.,

14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non-obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e., electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65 B (2). Following are the specified conditions under Section 65- (2) of the Evidence Act.

"(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer.

(ii) The information of the kind contained in electronic record or of the kind from which the

information is derived was regularly fed into the computer in the ordinary course of the said activity.

(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly, for some time, the break or breaks had not affected either the record in the accuracy of its contents; and

(iv) The information contained in the record should be a re-production or derivation from the information fed into the computer in the ordinary course of the said activity."

25. By relying on the above decision of the Honourable Supreme Court, the learned counsel for the appellant would contend that in the present case, the four conditions prescribed under Section 65-B of The Evidence Act has not been complied with, therefore, in such circumstances, the Court below ought not to have relied on Ex.P21 to conclude that the material particulars with respect to the matrimonial dispute between the appellant and the respondent were supplied by the appellant or the counsel for the appellant to print and electronic media.

26. Above all, the learned counsel for the appellant would contend that the marriage between the appellant and the respondent was solemnised at New Jersey, United States of America. Soon after the marriage, the appellant and the respondent resided at United States of America. The respondent left the matrimonial company of the appellant during January 2013 and from then on she is residing in India. On the other hand, the appellant is residing at United States of America throughout. The fact remains that the marriage was solemnised at United States of America where the appellant and the respondent jointly lived soon after their marriage. While so, the Family Court has no jurisdiction to entertain the original Petition. Even though the appellant has filed Writ Petition No. 34838 of 2004 before this Court questioning the jurisdiction of the family Court to take up the Original Petition, which was dismissed by this Court and it culminated in the appeal filed by the appellant in the order dated 19.08.2010 passed by the Honourable Supreme Court in S.L.P. No. 20410 of 2010, the Honourable Supreme Court, while dismissing the Special Leave Petition granted liberty to the appellant to let in oral and documentary evidence to prove his claim that he is a permanent citizen of United States of America. Even though the appellant has filed documentary evidence to substantiate his citizenship, the Family Court failed to consider those documents. In any event, the Family Court has no territorial jurisdiction to entertain the Original Petition given the facts and circumstances involved in this case and therefore, the learned counsel for the appellant prayed for setting aside the order passed by the Family Court, as one without jurisdiction.

27. The learned counsel for the appellant would further contend that while allowing the Original Petition filed by the respondent for dissolution of the marriage, the Family Court, without any discussion as to the resourcefulness or otherwise of the respondent, mechanically directed the appellant to pay a sum of Rs.40 lakhs as permanent alimony. The Family Court, taking into account only the submissions made by the respondent that her prospects in the cine field has come down and she could not maintain herself, has allowed the application and directed the appellant to pay a whooping sum of Rs.40 lakhs as permanent alimony. In this context, the learned counsel for the appellant placed reliance on the decision of the Honourable Supreme Court in the case of (Jalendra Padhiary vs. Pragati Chhotray) reported in 2018 (6) SCALE Page No.7 to contend that while allowing the application for permanent alimony, the financial capacity of the husband or wife as the case may be has to be examined and in the absence of the same, the order passed by the Family Court is not sustainable.

28. Per contra, the learned counsel appearing for the respondent would vehemently contend that Section 22 of The Hindu Marriage Act, 1955 recognises the right to privacy between the parties in a proceedings conducted under The Hindu Marriage Act. Contrary to the provisions of Section 22 of The Hindu Marriage Act, the appellant herein had indulged in character assassination by supplying the material documents relating to the matrimonial relationship between the spouses to the press and electronic media and thereby the appellant had tarnished the image of the respondent. In order to substantiate those averments, the respondent has also examined PW2, reporter of Kumudham weekly. Therefore, according to the counsel for the respondent, such an attempt on the part of the appellant is nothing short of matrimonial cruelty and therefore, the Family Court is wholly justified in granting a decree of divorce on the ground of cruelty. The act of the appellant in supplying material documents and photographs to the press and print media is nothing but an attempt to tarnish her image and the instances relating thereto have been rightly taken into consideration by the Family Court for the purpose of deciding the matrimonial issues between the appellant and the respondent. Therefore, according to the counsel for the respondent, the Family Court is right in holding that the respondent was subjected to matrimonial cruelty at the instance of the appellant.

29. As regards the application for permanent alimony, even though the Family Court has pointed out that the respondent had lost her prospects in the cine field by reason of the matrimonial dispute between her and the appellant, the Court below, without any justification, had awarded only Rs.40 lakhs towards permanent alimony instead of Rs.5 Crores sought for by her. The Family Court failed to take note of the financial

status of the appellant, which he himself admitted in his evidence to the effect that he is earning a hefty sum as salary in United States of America as a Software Engineer. The respondent has clearly averred in the application seeking permanent alimony that even in the year 2002, the appellant was only earning a sum of Rs.45 lakhs as salary per annum and he is resourceful enough to pay the permanent alimony as prayed for, while so, the Family Court is not justified in awarding a sum of Rs.40 lakhs towards permanent alimony instead of allowing the application as prayed for.

30. As regards the application filed by respondent seeking return of articles which belonged to her, the learned counsel for respondent would contend that she had categorically asserted in the application in I.A. No. 2438 of 2011 that all the jewels which belonged to her were kept in a safety locker in Bank of America in the city of Sanjose in the State of California and when she returned to India during January 2003, she did not take back her jewels. In spite of her request made to the appellant to hand over the jewelleries, he refused to return back the valuable jewelleries which belonged to her. The Family Court did not consider the prayer sought for by the respondent in the proper perspective and dismissed the application.

31. Having heard the submission of the learned counsel for both sides at length, we have carefully perused the materials on record, including the order of the Family Court, which is impugned in these Civil Miscellaneous Appeals.

32. As we have dealt with the factual matrix of this case in detail, we refrain from dealing with the same any further. However, for the sake of disposal of these appeals, certain facts, which are germane and necessary alone are taken up for consideration.

33. The respondent herein is a cine star having starred in several Tamil, Telugu, Kannada, Malayalam and Hindi Movies. She was given in marriage to the appellant, who, by then, was working as a Software Engineer in United States of America. The marriage between the appellant and the respondent was an arranged marriage having been solemnised on 17.04.2002 at Balaji Temple, Bridge Water, New Jersey, United States of America. After the marriage, the appellant and the respondent lived together in the house of the appellant at United States of America. From the various letters exchanged between the appellant and the respondent, which are part of the records, we could infer that the matrimonial life between the appellant and the respondent was by and large blissful and peaceful. According to the respondent, she discovered a letter written to the appellant by one of his girl friends Anu Iyer sent by e-mail and based on that, she alleged that the appellant had an illicit

intimacy with that girl. Even though the respondent narrated the sequences of events that led to discovery of the letter sent by e-mail and marked as Ex.P6 dated 03.05.2002, upon consideration of the evidence, the Family Court came to a conclusion that this letter could not be given much credence inasmuch as the respondent, in her subsequent letters exchanged with her husband/appellant, had paid rich encomiums to him. Therefore, had the letter marked as Ex.P6 is true and genuine and which had caused a rift between the appellant and the respondent in the matrimonial life, the respondent could not have written letters in such fashion subsequently. That apart, Ex.R35, photo album was marked to show that the appellant and the respondent lived happily in United States of America until the respondent returned back to India during January 2003. In any event, the Family Court has analysed the photos and the various letter correspondence that had taken place between the appellant and the respondent in extenso to conclude that the appellant and the respondent were living happily until January 2003 when the respondent came to India in connection with a dance programme. Even thereafter, the appellant and the respondent lived happily for some time, which were duly recorded by the Family Court to conclude that till such time, the appellant and the respondent were living happily. Thus, according to the counsel for the appellant, the conclusion arrived at by the Family Court that the respondent was subjected to matrimonial cruelty by the respondent cannot be sustained.

34. On perusal of the original petition filed by the respondent, we find that the respondent had alleged that the appellant compelled her to drive the car at United States of America endangering her safety, she was made to take unbelievable quantity of food jeopardising her health, she was not properly taken care of when she was pregnant, she was confined in a room without food etc., These allegations, in our opinion, were not only substantiated by the respondent, but they are not such that those averments will constitute matrimonial cruelty at the instance of the appellant herein. In fact, in Ex.P-7, letter dated 24.01.2003 sent by the respondent through e-mail from India, she has asked the appellant to take care of his health by taking his food at the right time. Therefore, Ex.P-7 would falsify the averments made by the respondent in the Original Petition and the instances that had taken place during the course of the stay of the respondent at United States of America are trivial, besides that they are not substantiated by her and therefore, these averments are not sufficient to dissolve the marriage solemnised between the appellant and the respondent on the ground of cruelty. Therefore, we are of the view that the Family Court is right in holding that the averments made by the respondent in the Original Petition relating to the instances that had taken place when the respondent stayed in United States of America along with the

appellant are vague and unsubstantiated to constitute matrimonial cruelty on the respondent.

35. Even as per the averments contained in the Original Petition, we find that after returning to India during January 2013, the respondent went to Dallas, United States of America for a dance programme. On hearing about the respondent performing a programme at Dallas, the appellant, being her husband, attempted to talk to her. It appears that there was a commotion and the appellant was prevented from meeting the respondent. It is at this point, even according to the respondent, the relationship between the appellant and the respondent has strained and misunderstanding had cropped up. Thus, the starting point for the matrimonial unrest or rift between the appellant and the respondent commenced after the respondent parted with the matrimonial company of the appellant in United States of America and reached India during January 2013 and not during the course of stay of the respondent in the matrimonial home along with the appellant. The matrimonial life between the appellant and the respondent was by and large blissful, peaceful and conducive to lead a happy matrimonial life until January 2003. Even during January 2003, the respondent deserted the matrimonial company of the appellant and left United States of America on her own to participate in a Television Programme in India. Thus, the respondent deserted the matrimonial company of the appellant/husband during January 2003 when the matrimonial relationship between the appellant and the respondent was cordial and conducive. Therefore, we are of the view that the allegations of the respondent that she was subjected to matrimonial cruelty during her stay with the appellant in the matrimonial home at United States of America cannot be countenanced as it was not substantiated by her by any material evidence.

36. Even according to the respondent, on 05.07.2003, at the behest of elders, friends and counsel for both sides, a meeting was convened, during which attempts have been unsuccessfully made for a re-union of the appellant and respondent and consequently, it was decided to dissolve the marriage by mutual consent by filing a Petition under Section 13-B of The Hindu Marriage Act before the competent Court. However, the appellant, suppressing the deliberations made in the meeting convened on 05.07.2003, caused a legal notice dated 08.07.2003 through his counsel making unceremonious allegations against the respondent. Even before the notice dated 08.07.2003 sent by the appellant was received by the respondent, the respondent made arrangements to file a Petition under Section 13-B of The Hindu Marriage Act. While so, to the shock and surprise of the respondent, the contents contained in the draft Petition was published in one issue of Daily Thanthi dated 11.07.2003. The same news also appeared in the Tamil Daily Malai Malar on

11.07.2003. On 12.07.2003, the media personnel sought the response of the respondent, but she refused to comment. Even the refusal of the respondent to comment about the news item published on 11.07.2003 was also published in the Tamil Daily Dinamalar and Dinakaran on 12.07.2003. Further, on the same day namely 12.07.2003, the appellant gave a personal interview to the Tamil Daily Malai Malar relating to the intricate matrimonial relationship between him and the respondent. Not content with, on 13.07.2003, a news item was published in one issue of Dinamalar dated 13.07.2003 under the caption "Why Suganya's divorce? The husband breaks the news!" Yet another news report was also published in the Tamil Daily Dinathanthi on 14.07.2003 in which the contents of the notice dated 08.07.2003 sent by the appellant to the respondent was prominently mentioned. The very same publication was also made in the Vikatan Internet News Magazine dated 14.07.2003. Above all, in the weekly magazine 'Kumudham' reporter, the marriage photograph of the appellant and the respondent was prominently published with a cover story touching the matrimonial relationship between the appellant and the respondent. Not content with the above publication, according to the respondent, the appellant gave an interview from United States to Dinamalar newspaper in which he even disclosed about the abortion caused to the respondent while she was in United States. In such circumstances, the father of the respondent had written a letter through e-mail dated 23.07.2003 to the appellant in which he has made the appellant responsible for publication of the newspapers.

37. In the light of the above averments made in the Original Petition, it is necessary to consider at whose instance the paper publication has been made and whether publications so made had resulted in inflicting matrimonial cruelty on the respondent.

38. According to the respondent, it is the appellant who had furnished the material particulars relating to the matrimonial relationship between him and the respondent, besides furnishing the marriage photographs, copy of the legal notice issued by him on 08.07.2003 and had also given a phone interview touching the intricate nuances in the matrimonial relationship between the appellant and the respondent. In order to substantiate these averments, on behalf of the respondent, the reporter of Kumudham Magazine was examined as PW2. We have gone through the evidence of PW2 in his chief examination as well as cross-examination. On perusal of the deposition of PW2, it could be inferred that he was the Senior Editor of the Tamil daily Kumudham Reporter. He admitted that in the weekly magazine of Kumudham Reporter, Ex.P20 a cover story about the respondent was published and the front page of the book carried the marriage photograph of the appellant and the respondent. The categorical assertion of PW2 in his deposition is that he

was furnished with the material particulars relating to the matrimonial relationship of the appellant and the respondent by Mrs. Nalini, counsel for the appellant. He went on to depose that it is Mrs. Nalini who had furnished the photograph and e-mail letters and other materials to enable him to publish the news report. At this stage, an objection was raised as to the examination of PW2 but it was overruled by the Family Court and he was allowed to depose. PW2 was also cross-examined at length by the counsel for the appellant. When a specific question was put to PW2, he reiterated that on the basis of the inputs given by Mrs. Nalini, counsel for the respondent in the Original Petition (appellant herein) the publications were made. For instance reference, the relevant portion of the Chief examination of PW-2 is extracted below:-

“என் பெயர் ஏகலைவன். நான் தற்போது குழுதம் ரிப்போர்ட் பத்திரிகையில் வேலை பார்க்கிறேன். சீனியர் நிரூபராக வேலை பார்க்கிறேன். 2003ஆம் குழுதம் ரிப்போர்ட் பத்திரிகையில் வேலை பார்த்தேன். ம.சா.ஆ.20 ஆவணம் 20.07.2003 குழுதம் ரிப்போர்ட் வாரம் இருமுறை பத்திரிகையில் சுகன்யா பற்றி ஒரு அட்டை பட கட்டுரையை நான் எழுதியுள்ளேன். இந்த அட்டைப் பட கட்டுரைக்கு எதிர்மனுதாரரின் வழக்கறிஞர் நளினி என்பவர் வழங்கினார். அட்டைப் பட புகைப்படம் மற்றும் இமேயில் ஆகியவற்றை நளினி அவர்கள் வழங்கினார்கள். எனக்கு வழங்கிய புகைப்படம் மற்றும் இமேயில் வழக்கறிஞர் தற்போது நீதிமன்றத்தில் ஆஜராகி இருக்கிறார் என்றால் சரி (ஆட்சேபனை தெரிவிக்கப்பட்டது)

39. Thus, it is evident from the Chief-examination of PW2 that he had categorically stated that he was supplied with the material particulars such as marriage photograph etc., for being published by none other than the counsel for the appellant herein. In the cross-examination of PW2 he has stated as follows:-

“கேள்வி ° ஒருவருடைய அந்தரங்க வாழ்க்கையை எழுதுவதற்கு முன் ஆசிரியர் குழு எழுத்து மூலமாக ஆதாரம் பெற்ற பிறகு தான் இது போன்ற விஷயங்களை வெளியிடுவார்கள் என்று சொன்னால் -

பதில் எழுத்து மூலமான ஆதாரம் தவிர்த்து சொல்பவரின் நம்பக தன்மை மற்றும் அவர் வழங்கும் ஆதாரம் சரியாக இருந்தால் நாங்கள் வெளியிடுவோம்.

கேள்வி ° இவ்வாறு வெளியிட சரி என்பதை யாரிடம் நீங்கள் சரிபார்த்தீர்கள் என்று கேட்டால் -

பதில் ° நளினி என்பவர் கொடுத்த தவவலின் பெயரில் வெளியிடப்பட்டது

கேள்வி யாரிடம் சரிபார்க்கப்பட்டது -

பதில் ° ஸ்ரீதரின் வழக்கறிஞர் நளினி கொடுத்த தகவலின் பேரில் அவர்களிடம் சரிபார்த்து கொண்டது ஒன்று, மற்றொன்று நடிகை சுகன்யாவிடம் கேட்ட போது எதுவுமே தவறு என்று மறுக்கவில்லை. கருத்து சொல்ல விரும்பவில்லை என்றார். எனவே, இந்த நம்பக தன்மையுடன் வெளியிட்டோம்.

கேள்வி ° குழுதத்தில் வெளியிட்ட கட்டுரை என்னுடைய தனிப்பட்ட தகவல் திரட்டு பெயரில் எழுதுகிறீர்கள். இந்த கட்டுரைக்கும் நளினி என்பவருக்கும் சம்பந்தம் கிடையாது என்று சொன்னால் -

பதில் ° தவறு. நளினி என்பவர் இந்த வழக்கு குறித்து என்னோடு பேசினார் என்பதற்கான ஆடியோ ஆதாரத்தை நீதிபதி அவர்களிடம் கொடுக்கின்றேன்.

ஆடியோ ஆதாரம் ம.சா.21 எதிர் மனுதாரரின் கடுமையான ஆட்சேபனையுடன் குறியிடப்பட்டது.

கேள்வி ° ம.சா.21 ஆடியோ ஆதாரத்தை ஏன் ஏற்கெனவே தாக்கல் செய்யப்படவில்லை என்று கேட்டால் -

பதில் ° அன்று அந்த கேள்வி கேட்கப்படவில்லை.

40. From the above deposition of PW2, it is evident that the appellant's counsel had furnished the material particulars relating to the matrimonial dispute between the appellant and the respondent for being published in print media. In the cross-examination of PW2, he has categorically deposed that Exs. P2, P4 and Ex.R5 were furnished to him by the counsel for the appellant. Even though Ex.P21 was marked subject to stiff opposition on behalf of the counsel for the appellant, the Family Court, in para No.52 of the order recorded a finding that the conversation recorded in Ex.P21, compact disc would indicate that the telephone call was made on behalf of the appellant to PW2 and that the call has been made only with a view to make a prominent news about the matrimonial discord of the respondent in the magazine. The Family Court further recorded a finding that PW2 has been insisted to publish the matrimonial discord between the appellant and the respondent at the instance of the appellant.

41. Above all, we find from the records that in the Tamil Daily Dinathanthi dated 14.07.2003, the legal notice dated 08.07.2003 issued by the appellant through his counsel to the respondent was verbatim re-produced in Tamil. According to the respondent, the appellant and her counsel have furnished the copy of the legal notice dated 08.07.2003 to the news paper publisher without which it cannot be published on 14.07.2003 in the newspaper accurately with reference to each and every statement contained in the legal notice dated 08.07.2003. We have also perused the copy of the newspaper publication made on 14.07.2003 and find that the contents contained in the legal notice dated 08.07.2003 have been published verbatim in Tamil.

42. Having analysed the above facts, the Family Court recorded a finding that the entire operation was made on behalf of the appellant herein only to portray the respondent in a bad light with an intention to damage her celebrity status in the eyes of the public. Therefore, on the basis of the aforesaid evidence of PW2 and Ex.P21, compact disc, the Family Court concluded that the respondent was subjected to matrimonial cruelty by the appellant by furnishing the material particulars relating to the matrimonial dispute to the print or electronic media with a view to sully her image in the eyes of the general public. We are in complete agreement with such a finding recorded by the Family Court.

43. On perusal of the deposition of PW1 and the findings recorded by the family Court on hearing the conversation recorded in Ex.P21, compact disc, we are of the view that the matrimonial life between the appellant and the respondent was by and large peaceful and blissful till January 2003 when the respondent returned to India. Even as admitted by the respondent, she returned to India during January 2003 not due to any confrontation with the appellant but to attend a Television Programme in India. In fact, after reaching India, certain letters were exchanged between the appellant and the respondent and they clinchingly prove that both the appellant and the respondent have no quarrel or qualm towards each other. It appears that when the appellant intended to come to India, he was asked to bring back her jewels and other articles, which the appellant claimed to have handed over them to the father of the respondent on reaching Chennai. At this stage, it appears that there was some confrontation between the appellant and the respondent on the one hand and the family members of the appellant and the respondent on the other. In order to patch up the differences and to smoothen the roughed feather, a meeting was convened on 05.07.2003 in the presence of the family members, friends and counsel for both sides. Even though a decision was taken to file a petition under Section 13-B of The Hindu Marriage Act to dissolve the marriage by mutual consent, it was not workable. When such attempts were made to pacify the wrangling spouse to resolve the matrimonial dispute, the publications made in the print and electronic media have poured oil on troubled waters. Therefore, the differences which cropped up between the appellant and the respondent in their matrimonial relationship had widened and even they could not agree for filing a petition under Section 13-B of The Hindu Marriage Act. We also find from the publication made on 14.07.2003 that the contents of the legal notice dated 08.07.2003, sent on behalf of the appellant, was re-produced verbatim. In our opinion, the reputation and image of the respondent, as a celebrity and a leading cine actress by then, had been sullied and she was portrayed in poor light by reason of the publication of the news report, touching her matrimonial relationship with the appellant, at the instance of the appellant. This, in our opinion, is nothing short of matrimonial cruelty.

44. The learned counsel for the appellant would vehemently contend that the Family Court ought not to have relied on the deposition of PW2 to untie the matrimonial relationship between the appellant and the respondent without following the procedures contemplated under law while receiving the compact disc under Ex.P21. The compact disc marked as Ex.P21 is a secondary evidence and it is inadmissible in evidence besides it was not received in evidence in accordance with the provisions contained under Section 65 B of The Evidence Act. It is

further contended that PW2 is a chance witness. He deposed about the person who has handed over the compact disc only during the course of evidence before the Family Court. PW2 did not independently identify the person who handed over the documents to him but deposed so only before the Court. The alleged compact disc was not produced at the time of deposition of PW2 in his chief-examination. Therefore, according to the counsel for the appellant, Ex.P21 is inadmissible in evidence and the Court below ought not to have relied on the same. In this context, useful reference can be made to Section 65 B of The Evidence Act, which reads as follows:-

"65-B. Admissibility of electronic records:- (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings without further proof or production of the original, as evidenced of any contents of the original or of any fact stated therein of which direct evidence would be admissible."

45. It is evident from Section 65-B of The Evidence Act that a compact disc shall also be deemed to be a document provided the conditions mentioned are satisfied while receiving the evidence in electronic form. In the decision of the Honourable Supreme Court in the case of (Shafhi Mohammed vs. State of Himachal Pradesh) reported in (2018) 2 Supreme Court Cases 801 it was held that the applicability of procedural requirement under Section 65-B (4) of the Evidence Act has to be applied only when the electronic evidence is produced by a person, who is in a position to produce such certificate being in control of the said device and not of the opposite party. As such, the requirement of certificate under Section 65-B (4) of the Evidence Act is not always mandatory.

46. In the present case, the respondent could not be expected to produce the compact disc as it was not in her control and possession and the respondent may not even knew about the existence of such a compact disc at the time of trial in the Original Petition. When PW2 was cross-examined, a specific question was posed to him as to whether he had verified the material particulars relating to the publications made by him, he not only answered that they were supplied to him by the counsel for the appellant but also produced the compact disc to substantiate his evidence. Thus, the compact disc, Ex.P21 was not produced by PW2 voluntarily but only when a question was posed to him, he produced the compact disc, Ex.P21 to strengthen

his evidence. Moreover, PW2 was examined only in his personal capacity as Journalist of the Tamil Daily Kumudham. PW2 did not produce the compact disc on his own. He produced the compact disc by taking it out of his bag when a question was posed to him during cross-examination as to whether he will be in a position to substantiate that the material particulars relating to this case have been given to him by the counsel for the appellant, he had produced the compact disc, Ex.P21 to substantiate the same. Therefore, we are not inclined to accept the submission of the counsel for the appellant that the compact disc, Ex.P21 is not inadmissible in evidence. In fact, we find from the order passed by the Family Court that the compact disc was played in the court laptop and the conversation recorded therein was heard and/or studied by the Court below to conclude that the telephone call was made to PW2 on behalf of the appellant.

47. The Family Court, during the course of trial in the matrimonial proceedings is empowered to receive the evidence in the form such as report, statement, document or any information as could be evident from Section 14 of the Family Court Act. Section 14 of The Family Court can be usefully extracted hereunder, which reads as follows:-

"14. Application of Indian Evidence Act, 1972:- A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).

20. Act to have overriding effect:- The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act."

48. It is clear from Section 14 of the Family Court Act that the technicalities of Indian Evidence Act relating to admissibility or relevancy of evidence are not strictly applicable in relation to a proceedings under the Family Court Act touching the matrimonial disputes. Section 20 of the Family Court Act has an overriding effect over all other law for the time being in force. Thus, the Family Court is empowered and vested with a wide discretion to take note of the evidence in any form such as report, statement, documents, information or matter that may be required to effectively deal with the real controversy in dispute. Thus, Section 14 of the Family Court Act provides a discretion to the Family Court to receive evidence irrespective of rigours of Evidence Act. In this context, we are fortified by the decision of the Division Bench of the Bombay High Court, which was relied on by the counsel for

the respondent, in the case of (Shivanand Damodar Shanbhag vs. Smt. Sujata Shivanand Shanbhag) (2013 AIR CC 1156 (Bom)). In the said decision, the Bombay High Court had an occasion to deal with the scope and applicability of Section 14 of The Family Court Act, which reads as follows:-

"Section 14 of the Family Courts Act provides for exception to the general rule of evidence regarding admissibility of statements and documents, if permissible by the Court etc., It has been so provided looking to the nature of the cases, which are decided by the Family Courts. The Court should not go into the technicalities and should also take a decision on the material before it in a broad based manner.....

Section 14 of the Family Courts Act is a special legislation and the principles of admissibility of documents as provided under the Evidence Act are not relevant to such cases.

49. A similar view was taken by the Division Bench of Gauhati High Court in (Narayan Roy vs. Smt. Jamuna Dev (Roy) AIR 2010 Gau 75. Useful reference can be made to the relevant portion of the said decision, which reads as follows:-

"Section 14 of the Family Courts Act, 1984, stipulates that a family court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872). The rigor of the Indian Evidence Act, therefore, is not to be applied in a proceeding before the family court constituted under the 1984 Act."

50. In this case, PW2 was summoned to depose on behalf of the respondent during the course of trial to prove that appellant indulged in character assassination by supplying the material particulars touching the matrimonial proceedings to the electronic and print media. It is on the basis of the deposition of PW2 and the submissions made on behalf of the respondent, the Family Court, in our view, has rightly concluded that the appellant indulged in an assassination-spree to cause acute mental agony, mental disturbance and hardship to the respondent, which act on the part of the appellant is nothing short of cruelty. Thus, we are of the considered opinion that the simmering matrimonial dispute that existed between the appellant and the respondent had widened, due to the publications made in the electronic and print media and it had reached a stage where they could not return back to enjoy the matrimonial bliss. In any event, as we have held above, the appellant, by virtue of his giving interview to the print and electronic media, had caused matrimonial cruelty on the respondent and thereby her image and reputation have been

sullied. In such view of the matter, we have no hesitation to hold that the appellant is guilty of committing matrimonial cruelty on the respondent and on that ground, the Family Court is justified in untying the matrimonial knot between the appellant and the respondent.

51. It is seen from the deposition of PW2 that Ms. K.M. Nalinisree, the counsel, who appeared for the appellant before the Family Court, had supplied him with material particulars of the matrimonial dispute, which has become the subject matter of the lis and thereby, there was every likelihood of the said counsel to be examined as witness in the case. In such circumstances, we are of the firm view that the said counsel for appellant ought not to have thereafter continued to appear on behalf of the appellant in the case. In this context, it would be necessary to point out Rule 13 in Chapter V, Part III of Bar Council of India Rules framed under Section 49 (c) of The Advocates Act, 1961, which reads as follows-

"An advocate should not accept a brief or appear in a case in which he has reason to believe that he will be a witness and if being engaged in a case. It becomes apparent that he is a witness on material question of fact, he should not continue to appear as an Advocate, if he can retire without jeopardising his client's interests.

52. In fact, in an identical situation, by referring to the aforesaid Rule, Honourable Justice M. Srinivasan (as His Lordship then was) had rendered a decision in the case of V.P. Nagarajan vs. Prabhavathi reported in 1989 1 MLJ 475 wherein in para No.3, it was held as follows:-

"2. ....In recent times, an unhealthy practice has grown up among the members of the Bar to come out with affidavits in support of their clients even without the clients themselves filing affidavits setting out the facts. Unfortunately, the implication and consequences thereof have not been realised by them. Under Order 31, Rule 2, C.P.C. Affidavit will be in evidence in an application and the Court could order cross-examination of the deponent. Thus, the advocate who files an affidavit in support of an application is liable to be cross-examined and by filing the affidavit, he takes the role of witness. ....

The indiscriminate way in which affidavits are filed by counsel on record nowadays makes me doubt whether any of them is aware of the above rule.

3. Even assuming that the circumstances of the case force counsel on record to file affidavits in support of the applications, they should take immediate steps to protect the interests of the

client by not only requesting some other competent advocate to appear as counsel in that particular matter but also place the necessary materials before the Court to substantiate the averments made by them in their affidavits. The advocate who files an affidavit in court has no right to assume that his ipse dixit will be accepted by the court automatically without any security. Particularly when the opposite party challenges the correctness or truth of the averments in the affidavit, it is the paramount duty of the advocate, who is the deponent of the affidavit, to produce the best evidence to prove the contents of the affidavit. It will be nothing but vain glory, if the deponent thinks that, as members of the legal profession occupy a very high status, his affidavit is to be accepted on its own weight without any corroboration. No doubt the elevated position of the Bar is indicated by the term "la noblesse de la robe" (the aristocracy of the gown) but it should not be forgotten that rank imposes obligation (nobles oblige). Of late cases of negligence and dereliction from duty on the part of the advocates are so rampant that the members of the noble profession should resort to introspection and bring about measures to restore the dignity and honour of the profession. This case is itself an eloquent example of gross negligence on the part of the counsel on record. I would not have ventured to sermonise like this but for the argument of learned counsel for the petitioner that he expected the court below to accept his affidavit as the gospel of truth."

We share the aforesaid views of the erudite Judge of this Court in the decision referred to above. In our opinion, when a counsel appearing in a lis identifies himself or herself with his or her client and acts in violation of the professional norms or ethics, either due to over enthusiasm or for any other reason, such acts would amount to changing his or her role from that of an advocate to that of a witness in that case. Hence, in such a situation, his or her continued appearance in the said case would be improper and undesirable. In the present case also, as mentioned above, the counsel appearing for the appellant ought not to have continued or appeared on behalf of the appellant, after her actions in supplying material particulars to PW2 has become the subject matter of dispute on material question of facts.

53. We have also noticed from the records that the respondent herein has filed I.A. No. 848 of 2004 pending disposal of the Original Petition filed by her praying to

restrain the respondents 2 to 5 therein from in any manner, printing or publishing the proceedings relating to the institution of the petition filed by her before the Family Court or carry any other recital as news item in the telecast of their respective publications. The said application was dismissed by the Family Court against which she preferred C.R.P. (PD) No. 1695 of 2004 before this Court. By an order dated 18.08.2008, allowed the Civil Revision Petition. Thus, it is clear that the publication of the news items in the print and electronic media, touching the matrimonial dispute between the appellant and the respondent is such that it had caused acute mental disturbance to the respondent. Even assuming that Ex.P21, compact disc is not admissible in evidence, yet, the evidence of PW2, coupled with the paper publications made in the electronic and print media would show that only at the instance of the appellant, the material particulars of the matrimonial dispute of the appellant and the respondent were supplied to the news papers and print media, which would undoubtedly prove that the respondent was subjected to matrimonial cruelty. In such view of the matter, we are of the considered view that even assuming that the circumstances of the case forced the counsel for the appellant to file the present appeal on behalf of the appellant, after filing the appeal, the counsel for the appellant ought to have taken immediate steps to request some other counsel to appear as counsel for the appellant in this case especially when certain acts done by the counsel for the appellant had, either directly or indirectly, resulted in aggravating the matrimonial dispute which was hitherto simmering between the appellant and the respondent.

54. The learned counsel for the appellant would contend that the Family Court has no jurisdiction to entertain the Original Petition filed by the respondent for dissolution of the marriage. It is submitted by the learned counsel for the appellant that the marriage between the appellant and the respondent was solemnised at United States of America and soon after the marriage, the appellant and the respondent stayed at United States of America and therefore, the Family Court has no jurisdiction to entertain the Original Petition. As long as the appellant has no domicile in India, the Family Court cannot entertain the Original Petition filed by the respondent against the appellant. But we find that the appellant has already filed Writ Petition No. 34838 of 2004 before this Court to forbear the Family Court from proceeding with the Original Petition filed by the respondent for dissolution of marriage for want of jurisdiction, but the said writ petition was dismissed by this Court. As against the same, the appellant has filed W.A. No. 1181 of 2009 and it was also dismissed on 09.07.2010 holding that the domicile of the appellant herein is immaterial since the wife/respondent is a permanent resident of Chennai. The appellant has also filed S.L.P. No. 20410 of 2010 before the

Honourable Supreme Court and the same was also dismissed on 19.08.2010 by passing the following order:-

"We do not find any valid ground to interfere with the impugned decision of the High Court. Accordingly, the Special Leave Petition is dismissed. However, we leave the question of law open to be decided in an appropriate case. If the appellant has any other grievance, including his personal appearance etc., it is for him to approach the Family Court.

Since the petition for divorce is pending from 2004, we direct the Family Court to dispose of the same in accordance with law within a period of four months from the date of receipt of copy of this order."

55. Therefore, the issue as regards the jurisdiction of the Family Court to entertain the Original Petition has been set at naught by the Supreme Court, at the instance of the appellant, it is no longer open to him to re-agitate the same before this Court and therefore, the arguments advance by the counsel for the appellant, as regards the jurisdiction of the family court to entertain the Original Petition filed by the respondent, is hereby rejected.

56. Pending Original Petition, the respondent has filed I.A. No. 2437 of 2011 under Section 25 of The Hindu Marriage Act, seeking for a direction to the appellant to pay a sum of Rs.5 crores towards permanent alimony. According to the respondent, the appellant is employed as a Software Engineer and earning a sum of not less than Rs.45 lakhs per annum. On the other hand, the respondent would contend that she had lost her prospects in the cine field and she has no cine assignment which had eroded into her financial status hitherto maintained by her. Further, the publications of news items in the press and electronic media at the instance of the appellant had resulted in a situation where she could not concentrate on her work. Thus, according to the respondent, she has no wherewithal and was not resourceful enough to maintain herself.

57. The application filed by the respondent for permanent alimony was resisted by the respondent by filing a counter affidavit contending inter alia that due to recession in software industry, his income had drastically come down. The earnings which he is making is sufficient enough to maintain himself at United State of America. At any rate, he has no financial capacity to pay Rs. 5 crores sought for by the respondent towards permanent alimony. On the contrary, the income of the respondent derived from her various investments and share holdings will exceed more than Rs.100 crores. Thus, the appellant demanded the respondent to produce the statement

of income tax returns from 1999 and to prove that she has no capability to maintain herself.

58. The Family Court, upon consideration of the rival pleadings, passed the following order in I.A. No. 2437 of 2011, which reads as follows:-

"The petitioner wife filed permanent alimony under Section 25 of Hindu Marriage Act with a direction against the respondent to pay a sum of Rupees Five Crores. The marriage was solemnised on 17.04.2002 and the divorce petition was presented on 03.03.2004. This application was filed on 18.10.2010. The petitioner stated that the respondent was earning about Rs.45 lakhs in 2002. She further stated that during the past six years, she has not been able to concentrate on her profession due to the mental agony caused by the respondent and as a result her income has come down substantially. The respondent filed counter denying the above allegations. Admittedly, the respondent is working as a Senior System Analyst in U.S.A. In his evidence, RW1 admitted that he is in receipt of fatty salary and after the marriage, it seems that the petitioner has no cine assignment. Having considered her status as a celebrity at the time of marriage and the fatty salary of the respondent as well as the present financial status of the petitioner, I am of the considered opinion that fixing a sum of Rs.40,00,000/- (Rupees Forty Lakhs Only) as permanent alimony to the petitioner would be just and reasonable in the facts and circumstances of the case."

59. It is evident from the above order passed by the Family Court that the Family Court did not examine, discuss or evaluate the submissions of the appellant/ husband. Merely because the appellant/husband is earning a fatty salary, as pointed out by the Family Court, it alone cannot be a determining factor for the Family Court to grant permanent alimony to the respondent. The Family Court ought to have taken note of the resourcefulness or wherewithal of the respondent and her entitlement for getting permanent alimony from the appellant. Furthermore, the respondent has not let in evidence with respect to her resourcefulness or financial status warranting the Family Court to pass an order directing the appellant to pay a sum of Rs.40 lakhs. The contention of the counsel for the respondent in this appeal that the respondent need not lead any independent evidence as the petition for permanent alimony shall be automatically decided at the time of disposal of the original petition cannot be countenanced. We have also noted that the respondent also, consciously, has not let in evidence impressing upon the need for payment of maintenance to her or her financial capacity or incapacity to maintain herself. In the absence of

such evidence, the Family Court ought not to have awarded a sum of Rs.40 lakhs as maintenance to the respondent. Thus, the Family Court, without any discussion as to the financial capability or status of the respondent, directed the appellant to pay Rs.40 lakhs towards permanent alimony, which is not legally sustainable. The object with which Section 25 of the Family Court Act was enacted is not to elevate the status of the wife or husband as the case may be on par with the other. The grant of permanent alimony depends upon the earning capacity and the financial status of the husband or wife as the case may be to maintain himself or herself. In the present case, admittedly, the respondent is a Cine Star and she had acted in more than 60 films. Above all, even as per the admission of the respondent, she is a Bharatha Natyam dancer and performed various programmes in Television and in private functions as well. In such circumstances, we feel that the respondent cannot be heard to contend that she is not resourceful enough to maintain herself in the absence of permanent alimony from the appellant. In this context, useful reference can be made to the decision of the Honourable Supreme Court in the case of (Jalendra Padhiary vs. Pragati Chhotray) reported in 2018 (6) SCALE Page No.7 wherein it has been held as follows:-

"16. In our view, mere perusal of the order of the Family Court and the High Court quoted supra, would go to show that both the Courts failed to apply their judicial mind to the factual and legal controversy insofar as award of permanent alimony to the respondent (wife) is concerned. Both the Courts did not even mention the factual narration of the case set up by the parties on the question of award of permanent alimony and without there being any discussion, appreciation, reasoning and categorical findings on the material issues such as, financial, earning capacity of husband to pay the alimony and also the financial earning capacity of wife, a direction to pay Rs.15,00,000/- by way of permanent alimony to the wife was given. In our view, such direction is wholly unsustainable in law.

17. Time and again, this Court has emphasized on the Courts the need to pass reasoned order in every case, which must contain the narration of the bare facts of the case of the lis, the issues arising in the case, the submissions urged by the parties, the legal principles applicable to the issues involved and the reasons in support of the findings recorded based on appreciation of all the material issues arising in the case."

60. In the present case also, the Family Court, without rendering any finding as to the financial capability or otherwise of the appellant as well as the respondent directed the appellant to pay a sum of Rs.40 lakhs to the respondent.

Therefore, in the light of the above decision of the Honourable Supreme Court, we are of the view that the Family Court erred in directing the appellant to pay Rs.40 lakhs to the respondent towards permanent alimony.

61. As regards the application filed by the respondent to direct the appellant to return the jewelleries listed in the schedule of petition, the appellant has filed a counter affidavit contending that if really the respondent had brought valuable jewels, as claimed by her, the same could have been indicated in the documents provided by the customs authority, which is a statutory obligation to the person who enters United States of America. The obligation of the respondent, at the time of her entry into the United States of America is to declare all the jewelleries to the customs authority. However, no such declaration was ever made by the respondent which would only indicate that she has not brought such valuable jewels, as alleged. Even otherwise, the respondent did not produce any documentary evidence in support of her claim and therefore, the appellant prayed for dismissal of the application for return of jewelleries. The aforesaid contention of the appellant have not been disproved by the respondent by letting in any oral or documentary evidence. On the contrary, the appellant categorically asserted that whatever valuable things left by the respondent in the matrimonial home have been handed over to the father of the respondent during July 2013. In such view of the matter, the Family Court has rightly concluded that the respondent has not provided any tangible evidence to show that the items of jewelleries listed in the schedule of the petitioner were in possession of the appellant. We see no reason to interfere with such a finding rendered by the Family Court.

62. In the result,

(i) C.M.A. No. 936 of 2012 filed by the appellant is dismissed confirming the decree and Judgment dated 16.03.2012 passed in FCOP No. 569 of 2004 on the file of Principal Family Court, Chennai.

(ii) C.M.A. No. 1271 of 2012 filed by the appellant is allowed by setting aside the order dated 16.03.2002 passed in I.A. No. 2437 of 2011 in FCOP No. 569 of 2004 on the file of Principal Family Court, Chennai

(iii) C.M.A. No. 1121 of 2012 filed by the respondent is dismissed confirming the order dated 16.03.2012 passed by the Family Court in IA No. 2438 of 2011 in FCOP No. 589 of 2014.

(iv) In view of the order passed in CMA No. 1271 of 2012 filed by the appellant, C.M.A. No. 1122 of 2012 filed by the respondent for enhancement of maintenance amount is dismissed.

(v) No costs. Consequently, all the connected miscellaneous petitions are closed.

s/d-  
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

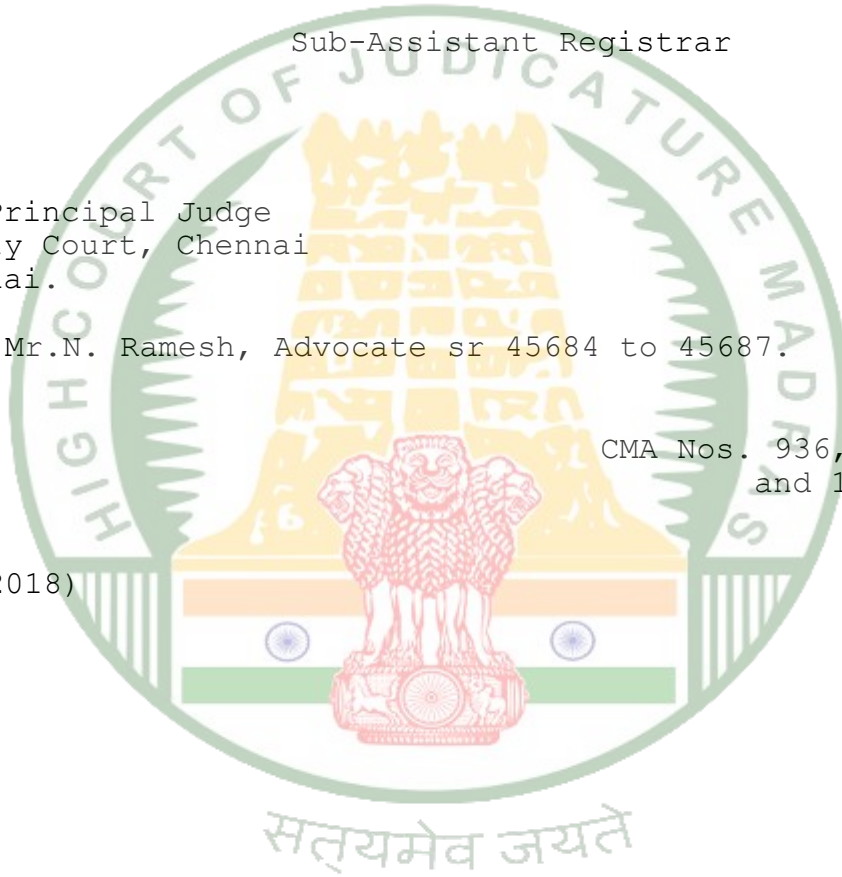
To

The Principal Judge  
Family Court, Chennai  
Chennai.

+4 Ccs to Mr.N. Ramesh, Advocate sr 45684 to 45687.

CMA Nos. 936, 1121, 1122  
and 1271 of 2012

TM(CO)  
SP(11/08/2018)



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