



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 21.06.2018

Pronounced on : 24.08.2018

CORAM

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THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

CMSA (MD) No.24 of 2016

and

CMP (MD) No.10293 of 2017

J.Muthu Krishnan

.. Appellant/Appellant/Petitioner

-Vs-

G.Radhika

.. Respondent/Respondent/Respondent

Prayer: This Civil Miscellaneous Second Appeal has been filed under Section 28 of Hindu Marriage Act, read with Section 100 of C.P.C., against the judgment and decree dated 28.07.2015 in H.M.C.M.A.No.12 of 2013 on the file of the III Additional District Judge, Tirunelveli, confirming the judgment and decree dated 30.04.2013 passed in H.M.O.P.No.5 of 2011 on the file of the Subordinate Judge, Valliyoor.

For Appellant : Mr.Sundaravathanam
for Mr.D.Senthil Kumar

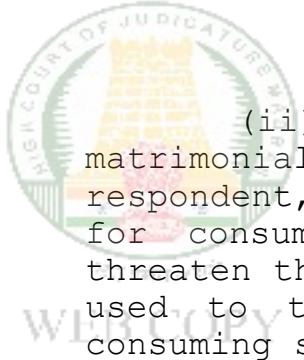
For Respondent : Mr.M.P.Senthil

ORDER

The unsuccessful husband before both the Courts below has filed the present Civil Miscellaneous Second Appeal, seeking to set aside the judgment and decree made in H.M.C.M.A.No.12 of 2013 dated 27.07.2015, on the file of the learned III Additional District Judge, Tirunelveli, confirming the judgment and decree made in H.M.O.P.No.5 of 2011, dated 30.04.2013, on the file of the learned Subordinate Judge, Valliyoor.

2.In the petition in H.M.O.P.No.5 of 2011 filed by the appellant, under Sections 13(1)(i-a) and 13(1)(i-b) of Hindu Marriage Act, 1955, before the Subordinate Judge, Valliyoor, the following are stated:

(i)The marriage between the petitioner and the respondent was solemnised on 13.04.2009 in Aavudaiammal Thirumana Mandapam, according to Hindu rites and customs. Even during the nuptial night, the respondent/wife refused to have cohabitation as she married the petitioner only on the compulsion by her step-mother and it was stated by the respondent/wife that she was willing to marry her relative by name Saravanan.



(ii)The respondent showed indifferent attitude towards the matrimonial life. When the petitioner attempted to kindle the respondent, she used to strangulate his private part, and refused for consummation of marriage. On such occasions, she used to threaten the petitioner that she will commit suicide. She repeatedly used to threat that she will commit suicide by having or by consuming sleeping pills. She was in possession of sleeping pills as she required the same for hormone imbalance treatment, treated by Christopher Hospital at Thysayanvilai. Finally, one fine day, she put the petitioner at peril as she consumed overdose of sleeping pills and it is the petitioner who noticed and saved her life. This caused the petitioner much mental agony and untold sufferings.

(iii)Apart from the same, the respondent had lodged criminal complaint before the Deputy Superintendent of Police, Valliyoor and the Inspector of Police, All Women Police Station enquired and closed the complaint as mistake of fact. But the same complaint came to be filed as second complaint lodged by the respondent was taken on file at the instigation of the Deputy Superintendent of Police, Valliyoor and referred to District Social Welfare Officer, Tirunelveli and enquiry has been done on several occasions by the Welfare Officer as well as by Police and all the family members of the petitioner were unnecessarily put into trouble and harassed by the respondent, in filing such false complaint, one after another. This caused mental cruelty to the petitioner and family members. The petitioner and his family members were forced to approach Courts for the grant of Anticipatory Bail and even after obtaining the orders, executed bond and appeared in compliance with the said orders, which put the family members of the appellant to utmost hardship.

(iv)The respondent left the matrimonial home on 08.09.2010 along with her jewels, which was under her possession and never returned back when the petitioner called her back to matrimonial home. The petitioner started feeling that he is sinking in a ship wreck.

(v)Till date the marriage is not consummated and the attitude of the respondent clearly shows that she is not willing to live with the petitioner. Hence, on the grounds of cruelty and desertion, the petitioner sent a legal notice and subsequent to the same, the petitioner sought for decree of dissolution of marriage.

3.In the counter statement filed by the respondent in HMOP.No.5 of 201, the following are stated:

(i)The respondent denied the allegations contained in the petition filed by the petitioner seeking for dissolution of marriage. She categorically denied that she denied for cohabitation right from the date of marriage.

(ii)The respondent denied that allegation as to the treatment taken by her at various Hospitals and also denied that she threatened the petitioner that she would commit suicide. On the



other hand, she stated that there was demand of dowry by the petitioner, which was not done and hence the petitioner left the respondent at the home of her parents. The conciliations by family members also failed.

(iii) Since the petitioner sent legal notice containing false details, the respondent also lodged complaints with the police and F.I.R. came to be registered under Sections 498-A of I.P.C. and Section 4 of Dowry Prohibition Act, in Crime No.4 of 2011 with the All Women Police Station, Valliyoor.

(iv) Though the respondent has admitted that there was no cohabitation of marriage, she stated that the same was not at her instance and only by the petitioner. Hence, the respondent prayed for dismissal of petition seeking for dissolution of marriage as the petition contains only false statements and allegations thereon are also not correct.

4. The learned Subordinate Judge, Valliyoor, after analysing the evidence and materials on record, declined to grant divorce by observing that the grounds arose in the petition were not proved. This appellant carried the matter in appeal in HMCMA.No.12 of 2013, before the learned III Additional District Judge, Tirunelveli, by whom the appeal has been dismissed refusing to grant decree of divorce. Hence, this appellant is before this Court.

5. The present Civil Miscellaneous Second Appeal was heard on the following substantial questions of law:-

A. Whether the First Appellate Court is right in confirming the order of dismissing the application seeking for the grant of divorce, without going through the pleadings?

B. Whether the First Appellate Court is right in dismissing the appeal, when the act of cruelty has been proved through documentary evidence?

C. Whether the Courts below are correct in answering the issues raised before it?

D. Whether the Lower Appellate Court wrongly appreciated the facts which lead to the wrong conclusions resulted in wrong verdict?

E. Whether the complaint before the District Social Welfare Officer on the ground of false allegations are not act of cruelty?

6. Since the parties to the proceedings are living separately for the past 7 years and more and it was admitted by both the parties in their respective pleadings and evidences that there was ~~no~~ of marriage, this Court is framing yet another substantial question of law under Section 100 of the Code of Civil Procedure Code, for consideration.



A. Whether the Lower Appellate Court ought to have considered the ground of breakdown of marriage atleast in the context of long separation between the married couple?

7. This Court on careful perusal of pleadings and evidences, both oral and documentary, had heard both the counsel in detail.

8. The learned counsel for the appellant submitted that the pleadings, oral and documentary evidence would show that the appellant has taken sincere efforts to have the matrimonial bond between them, but in vain and that there is no convincing evidence to show that the respondent was prepared to have the marriage consummated. Thereafter, there was indifference between them, which resulted in lodging false criminal cases by the respondent.

9. The learned counsel for the appellant also stated that both the Courts below failed to consider the evidence of the District Social Welfare Officer, Tirunelveli, that there was no report as to demand of dowry. Non-consummation of marriage was also recorded by him in his report which has marked as Exhibit Ex.P6. However, simply on the reason that the same officer has not come to depose the evidence before the Court, the learned Subordinate Judge, Valliyoor, just set it out of the record. When the report of the Social Welfare Officer is brought to the Court to file the report, the evidence of the authority should be necessarily taken into consideration. The refusal to set confidence against the said document stood against the appellant before both the Courts below.

10. The learned counsel for the appellant also added that for about 7 years by now, both the parties have been living separately and there is no possibility for re-union and mediation was conducted by this Court on various occasions, which not yield any fruit. Hence, a decree of divorce may be granted as per various decisions of the Hon'ble Supreme Court, on the ground of irretrievable breakdown of marriage. The learned counsel for the appellant having relied on several decisions of this Court and also by the Hon'ble Apex Court, to prove his contention and this Court also perused the decisions for a careful consideration.

11. This Court has consciously gone through the evidence on record. Even though, the respondent lodged a complaint with the All Women Police Station, stating the reason that the same is only due to stimulation by the appellant's notice dated 06.01.2011. It is also evidenced that family members of the husband were also roped in the complaint. The learned counsel for the appellant also stated that by means of lodging of a complaint, cruelty was perpetrated upon the appellant. Even though, the appellant or his family members was not arrested by the police, the appellant as well as his family members were harassed humiliated and thrown from post to pillar and pillar to post on the reason of enquiry by the police, only on the basis of the complaints by the respondent.



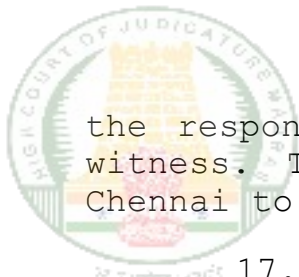
12.The learned counsel for the appellant has brought to the notice of this Court, an application filed by the appellant in CMP (MD)No.10293 of 2017 in the above appeal under Order XLI Rule 27 of C.P.C., to receive two documents, namely, certified copies of orders of this Court made in CrI.O.P.(MD)Nos.1452 and 2485 of 2011 dated 04.02.2011 and 25.02.2011 respectively. From the same, it could be seen that not only the appellant/husband, entire family members of the appellant were driven to Courts, in view of the complaints lodged by the respondent/wife. As a matter of fact, all the family members of the appellant were driven to Courts seeking for anticipatory bails. Hence, to decide the issue as to mental cruelty as alleged by the appellant, the documents mentioned in CMP(MD) No.10293 of 2017 were received as the same are necessary to decide the issue as to whether there is cruelty by the respondent wife.

13.This Court perused the oral evidence of the respondent/wife. During her cross-examination, though the respondent stated that she had lodged complaint and put the appellant's life at peril, she stated that the same has been filed only to have a matrimonial relationship with the appellant. On the other hand, she also admitted that she never took any step at her instance or at the instance of her family members to have the matrimonial bond exist. Her conduct in lodging complaint one after another reveals that she had no intention to lead matrimonial life with the appellant/husband.

14.The admissions made by the wife during cross examination are strange and shocking. There is clear cut admission that the husband did not demand dowry and there was no cruelty on account of the demand of dowry either by the respondent or by his family members. The further admission is that the notice issued contending that the husband drove away the wife demanding dowry is false. As far as the oral evidence of the respondent is concerned, the complaint has been initiated only on the basis of demand of dowry. She had categorically admitted that she had taken some treatment and also admitted that she had not taken any steps for consummation of marriage.

15.The Courts below have recorded concurrent factual findings to the effect that the grounds assigned in the petition have not been established. But, the fact remains that there is no possibility for re-union. Neither of the parties hereto, has not filed any application seeking for restitution of conjugal rights. Presently, the parties are 36 and 30 years respectively and in fact, both of them are living separately and apparently, there is no intention of having the nuptial life restored.

16.Apart from this, the learned counsel for the appellant stated that the appellant is also facing charges in a criminal case in C.C.No.478 of 2011 on the file of the learned Judicial Magistrate, Valliyoor, under Section 498-A of Indian Penal Code and



the respondent herein and her family members has been arrayed as witness. Till date, the appellant is all along travelling from Chennai to Valliyoor for more than 700 kms attending the said case.

17. In this context, the learned counsel for the appellant placed reliance upon various decisions of the Hon'ble Supreme Court right from the year 2002.

18. The Hon'ble Supreme Court, in the case of G.V.N. Kameswara Rao v. G. Jabilli, reported in (2002) 2 Supreme Court Cases 296, "Cruelty" does not necessarily involve life-threatening conduct or conduct resulting in bodily injury or damage to health or conduct which gives rise to a reasonable apprehension of danger to life, limb or health. Where parties had an unhappy relationship from the very beginning of their married life; respondent wife appeared to have been unwilling to live with the appellant husband from the start.

19. The Hon'ble Apex Court reported in 2005 4 AIIMR 363 (Monindarpalsinha N. Kochar v. Jyotindar Kaur Mohindarpal N. Kochar), stated as follows:

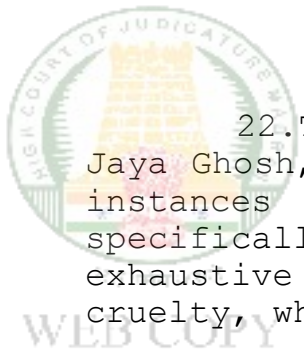
"10. In fact, the cruelty pleaded and established is not a physical cruelty but it relates to the conduct of the respondent which amounted to mental torture to the appellant."

20. The Hon'ble Supreme Court in V. Bhagat v. D. Bhaagat, (1994) 1 SCC 337 it has been defined that

"the mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and sufferings as would make it not possible for that party to live with the other."

21. In another decision, the Hon'ble Apex Court reported in (2006) 4 Supreme Court Cases 558 (Naveen Kohli v. Neelu Kohli), it is held that

"83. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our minds that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again."



22. The Hon'ble Supreme Court, in the case of Samar Ghosh v. Jaya Ghosh, reported in (2007) 4 SCC 511, has spelt out some of the instances which could be considered as mental cruelty. It is specifically mentioned in the judgment itself that the law is not exhaustive of, what mental cruelty is and what is not mental cruelty, which is only illustrative and not exhaustive.

"98. On proper analysis and scrutiny of the judgments of this Court and other Courts, we have come to the definite conclusion that there cannot be any comprehensive definition of the concept of 'mental cruelty' within which all kinds of cases of mental cruelty can be covered. No court in our considered view should even attempt to give a comprehensive definition of mental cruelty.

99. Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration.

101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.



(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

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(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day to day life would not be adequate for grant of divorce on the ground of mental cruelty.

(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes vasectomy or abortion



without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

23. This Hon'ble Court in a decision reported in (2007) 1 MLJ 698 (A. Viswanathan v. G. Lakshmi @ Seetha), discussed its view with regarding to lodging complaints before police is also sort of harassment.

"27. Finally, we have to consider whether there is any possibility for redemption of the matrimonial life of the parties, when admittedly the parties have been living separately for more than a decade, i.e. right from the date of petition for divorce. The appellant's contention that the respondent's two earlier marriages ended in failure has been spoken of by the latter in her oral evidence. Numerous suits and police complaint have been lodged by the respondent whereby it is not possible to reconcile and compromise. The police complaint dated 30.01.1997 has been marked in respect of harassment of the respondent on the appellant. Similarly, the respondent has given police complaint against the appellant and his son has been summoned for enquiry on numerous occasions. Therefore, there has been a constant harassment on account of these complaints.

28. All the above instances do really substantiate the acts of mental cruelty and lay a firm foundation for grant of divorce. Hence, in our considered view, it is established from the instances pleaded and proved by evidence, both oral and documentary, in support of the appellant that the Family Court, has not looked into these evidence based on the legal propositions and the established rule of law."



24. With regard to the separation of the parties in recent past, this Court had stated that there is no point for re-union except to grant a decree for divorce, which has been reported in (2012) 2 MLJ 833 (U.Sree v. U.Srinivas), it is held that

"88. In short, it would be difficult for the parties to bury the past and to begin a new relationship of husband and wife. For the past 15 years both parties have remained separately. During these years, they developed their own life style, remained in isolation and grown in their own thoughts. Marriage tie between the parties has become emotionally dead and the same is beyond repair because of the emotionally dead relationship which is a positive act of oppressive mental cruelty, in our consider opinion. There is no chance for both parties to live together in future. In such a context, the decree of Divorce is the only remedy to be passed, so that the parties may choose their life of their own way, when there has been no scope for their reunion.

89. The very fact that the appellant/wife has left the matrimonial house on 03.01.1996 and has not returned till date shows that there is animus deserendi on her part which is clearly established. Her course of conduct clearly establishes her desertion also. In the instance case, the marriage tie between the parties has damaged beyond any salvation. Merely to keep the marriage as a sham one is not a desirable one.

90. When the parties cannot live in peace, no purpose will be served in keeping the parties tied by the bond of marital relationship. While granting the relief, a Court of Law should not shy away from the realities."

25. In another decision, the Hon'ble Apex Court reported in AIR 2013 Supreme Court 2176 (K.Srinivas Rao v. D.A.Deepa), it is held that

"22. We need to now see the effect of the above events. In our opinion, the first instance of mental cruelty is seen in the scurrilous, vulgar and defamatory statement made by the respondent-wife in her complaint dated 4/10/1999 addressed to the Superintendent of Police, Women Protection Cell. The statement that the mother of the appellant-husband asked her to sleep with his father is bound to anger him. It is his case that this humiliation of his parents caused great anguish to him. He and his family were traumatized by the false and indecent statement made in the complaint. His grievance appears to us to be justified. This complaint is a part



of the record. It is a part of the pleadings. That this statement is false is evident from the evidence of the mother of the respondent-wife, which we have already quoted. This statement cannot be explained away by stating that it was made because the respondent-wife was anxious to go back to the appellant-husband. This is not the way to win the husband back. It is well settled that such statements cause mental cruelty. By sending this complaint the respondent-wife has caused mental cruelty to the appellant- husband.

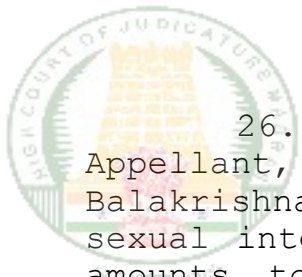
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26. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree.

...

28. In the ultimate analysis, we hold that the respondent-wife has caused by her conduct mental cruelty to the appellant-husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court the respondent-wife expressed that she wants to go back to the appellant-husband, but, that is not possible now. The appellant-husband is not willing to take her back. Even if we refuse decree of divorce to the appellant-husband, there are hardly any chances of the respondent-wife leading a happy life with the appellant-husband because a lot of bitterness is created by the conduct of the respondent-wife.

29. In Vijay Kumar, it was submitted that if the decree of divorce is set aside, there may be fresh avenues and scope for reconciliation between parties. This court observed that judged in the background of all surrounding circumstances, the claim appeared to be too desolate, merely born out of despair rather than based upon any real, concrete or genuine purpose or aim. In the facts of this case we feel the same."



26. In other decision relied by the learned counsel for the Appellant, the Hon'ble Apex Court (in Vidhya Viswanathan v. Kartik Balakrishnan reported in (2014) 15 SCC 21) stated that denial for sexual intercourse by wife for long time without sufficient reason amounts to "mental cruelty" and divorce petition filed by the husband is allowed on grounds of non-consummation of marriage for about three years is upheld by the Hon'ble Apex Court.

27. Yet another decision has been made by the Hon'ble Apex Court in Narendra v. K. Meena case, regarding the harassment by the wife, reported in (2016) 9 SCC 455:

"18. Applying the said ratio to the facts of this case, we are inclined to hold that the unsubstantiated allegations levelled by the respondent wife and the threats and attempt to commit suicide by her amounted to mental cruelty and therefore, the marriage deserves to be dissolved by a decree of divorce on the ground stated in Section 13(1) (i-a) of the Act.

19. Taking an overall view of the entire evidence and judgment delivered by the trial Court, we firmly believe that there was no need to take a different view than the one taken by the trial Court. The behaviour of the respondent wife appears to be terrifying and horrible. One would find it difficult to live with such a person with tranquillity and peace of mind. Such torture would adversely affect the life of the husband."

28. The above decision has been followed by the Hon'ble Supreme Court reported in (2017) AIR (SC) 2138 (Raj Talreja v. Kavita Talreja), wherein it has been explained in detail, what cruelty is?

"10. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act 1955 (for short 'the Act'). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she



filed another complaint alleging that her husband along with some other persons had trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self inflicted by the wife. Thereafter, proceedings were launched against the wife under Section 182 of I.P.C."

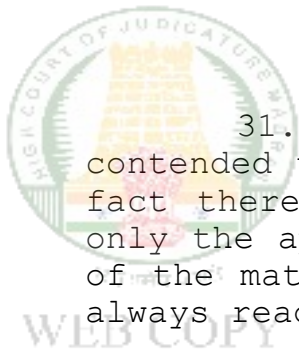
29.A Division Bench of this Court followed the above decision in its judgment passed in Savitha v. Velmurugan reported in (2017) 3 MWN (Civil) 614, stating that:

"In the above judgment the Hon'ble Apex Court had held that wife made reckless, defamatory and false accusation against her husband, his family members and colleagues which would definitely have the effect of lowering his reputation in the eyes of his peers and when it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusation against the other spouse would be an act of cruelty.

19.In the above judgment referred to in the foregoing paragraph the Hon'ble Apex Court had held that though the acts of the wife for filing false case against her husband amount to cruelty, had also stated that they are not oblivious to the requirements of the wife to have a decent living and directed the husband to pay substantial amount towards permanent alimony. Taking into consideration the ratio laid down by the Apex Court in the above referred judgment and applying the above principle to the present case we see that in this case also the wife had not only preferred a complaint alleging demand of dowry which she had not pursued further but had also alleged illicit intimacy of her husband with his own brother's wife and with his office colleague."

30.Another Division Bench of this Court also had an occasion to deal with similar issue, reported in (2007) 1 MLJ 698 (A.Viswanathan v. G.Lakshmi @ Seetha)

"23.Yet another instance of respondent's allegation was that the appellant was responsible for the death of his first wife. But, it is seen from the evidence that they had lived happily for 30 years and she had died only due to cardiac arrest and this specific allegation by the respondent also does constitute an act of mental cruelty. The various baseless allegations made in the written statement filed in matrimonial proceedings would certainly constitute acts of mental cruelty as seen from the number of decisions of the Hon'ble Supreme Court and High Courts supra."



31. On the other hand, the learned counsel for the respondent contended that there was no such alleged cruelty and as a matter of fact there was no desertion at all by the respondent wife. It is only the appellant who deserted the respondent wife by throwing out of the matrimonial home. He also added that the respondent/wife is always ready and willing to lead a marital life with the appellant.

32. Further, he contended that the application seeking for divorce on the ground of desertion, cannot be maintainable as the application for divorce has been filed on 18.01.2011, wherein the marriage between the parties took place on 13.04.2009, which is within two years of marriage. Further, the appellant husband has filed petition for divorce on 18.01.2011, which is within 4 months 19 days of the alleged date of desertion namely, 08.09.2010 and there cannot be any petition on the ground of desertion before 08.09.2012. The said issue has been already discussed in detail by the learned III Additional District Judge at Tirunelveli. Hence, the learned counsel for the respondent wife sought for dismissal of the present appeal and opted to confirm the decision made by the First Appellate Court.

33. It is true that no application for divorce can be filed on the ground of desertion within two years of marriage or even within two years from the date of desertion. The relevant provision to Section 13 of Hindu Marriage Act has been extracted hereunder:

"13. Divorce.- (1) Any marriage solemnized, whether before or after the commencement of this Act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce on the ground that the other party-

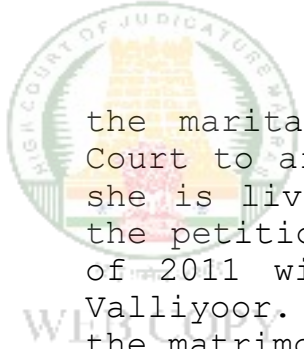
(i) has, after the solemnization of the marriage, had voluntary sexual intercourse with any person other than his or her spouse; or

(i-a) has, after the solemnization of the marriage, treated the petitioner with cruelty; or

(i-b) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition; or"

34. Hence, it is crystal clear that the application for divorce on the ground of desertion cannot be maintainable as filed by the appellant in HMOP.No.5 of 2011 on the file of the learned Subordinate Judge, Valliyoor. The contention of the learned counsel for the respondent to that effect is comprehensible in nature.

35. Any ordinary and prudent woman, who is ready and willing to have the marital bond with her husband, would file an application seeking for restitution of conjugal rights. Though it is contended on the side of the respondent that she is ready and willing to have



the marital bond exist, no material has been placed before this Court to affirm her intention. The respondent wife also admits that she is living separately, though not from 08.09.2010 as alleged in the petition, but, atleast from the date of complaint in Crime No.4 of 2011 with the Inspector of Police, All Women Police Station, Valliyoor. Till date, she had not expressed her willingness to have the matrimonial bond exist.

36. In the present case on hand, the respondent wife, though not intended to file an application seeking for restitution of conjugal rights, adding fuel to the fire, still prosecuting the relations through her marriage, cannot lead a peaceful life in near future also. Hence, the marital relationship between the parties ends and more particularly, the parties, have thrown the solemn vows of marriage into wind. The act of the respondent in prosecuting the family members of the appellant husband has been always a threat in causing mental agony and mental cruelty.

37. In so far as it related to the ground of cruelty is concerned, this Court after going through the evidence on record and other circumstances of the case is able to discern the intention of the parties. They have been continuously living separately without sincere attempt or any intention to have re-union between them. Hence, the continuance or allowing the existence of marriage between them will not serve any purpose and hence, their marital relationship has to be put to an end by dissolving their marriage, which could be obtained by grant of a decree for divorce.

38. It is reiterated that the parties had been living apart for the past 7 years and more. Since the marriage has become a mirage, nothing would serve by continuance of the nuptial relationship. This Court also observed that the ground of cruelty raised by this appellant has been established, since, it was admitted that she lodged a police complaint, but, when the same was referred to the District Social Welfare Officer, the same came to be reported that there is no demand of dowry by the appellant or by his family members.

39. In these circumstances, this Court is fortified in its view to grant a decree of divorce on the ground of irretrievable break down of marriage. Hence, the orders passed by the Courts below have to be inevitably be set aside and accordingly set aside and the Civil Miscellaneous Second Appeal deserves to be allowed.

40. In fine,

(a) this Civil Miscellaneous Second Appeal is allowed, granting a decree of divorce as prayed for by the appellant;

(b) the appellant is directed to pay a sum of RS. 5,00,000/- (Rupees Five Lakhs only) as permanent alimony to the respondent/wife within a period of eight



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weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The III Additional District Judge,
Tirunelveli.
2. The Subordinate Judge, Valliyoor.

Copy To:

The Section Officer, VR Section,
Madurai Bench of Madras High Court, Madurai. **(2 Copies)**

- +1CC to Mr. M. P. SENTHIL, Advocate, SR.No. 79994
+1CC to Mr. D. SENTHILKUMAR, Advocate, SR.No. 80127

CMSA (MD) No. 24 of 2016 and
CMP (MD) No. 10293 of 2017
24.08.2018

VSV
ES/RP/SAR 2/05.09.2018/16P/7C