

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01-11-2018

Pronounced on : 29-01-2019

CORAM:

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

Civil Miscellaneous Appeal No.1455 and 1456 of 2007

Meenakshi .. Appellant in both the appeals/
Respondent in 1455/17/
Appellant Petitioner in 1456/07

Versus

Premkumar Nachiappan .. Respondent in both the appeals/
Petitioner in 1455/07/
Respondent/Respondent in 1456/07

CMA No. 1455 of 2007:- Appeal filed under Section 19 of Family Courts Act against the Judgment and Decree dated 10.01.2007 passed in F.C.O.P. No. 440 of 2005 on the file of I Additional Principal Judge, Principal Family Court, Chennai.

CMA No. 1456 of 2007:- Appeal filed under Section 19 of Family Courts Act against the Judgment and Decree dated 10.01.2007 passed in F.C.O.P. No. 910 of 2006 on the file of I Additional Principal Judge, Principal Family Court, Chennai.

For Appellant : Mr. M. Ramamoorthy
in both the appeals

For Respondent : Mr. N.R. Chandran, Senior Advocate
for Mr. M. Arunkumar
in both the appeals

COMMON JUDGMENT

R. Subbiah, J

The appellant has come forward with these appeals aggrieved by the common Degree and Judgment dated 10.01.2007 passed by the learned I Additional Family Court Judge, Chennai in FCOP Nos. 440 of 2005 and 910 of 2006. While FCOP No. 440 of 2005 was

filed by the respondent-husband for grant of a decree of divorce, FCOP No. 910 of 2006 was filed by the appellant herein under Section 9 of The Hindu Marriage Act for restitution of conjugal rights. After considering the rival claim, the Family Court by the said common order dated 10.01.2007 allowed the Original Petition filed by the respondent/husband and granted a decree of divorce while dismissing the Original Petition filed by the appellant/wife for restitution of conjugal rights.

2. The respondent herein has filed FCOP No. 440 of 2005 by contending that the marriage between him and the appellant was solemnised as per Hindu rites and customs on 01.07.1999 at Kilapungudi, Sivagangai District. The marriage was arranged by the elders in the family and it was also registered in the office of the Registrar of Marriage, Madagupatti under Certificate No.8 of 1999 dated 02.07.1999. According to the respondent, he was working in United States of America prior to the marriage and had come down to India for the purpose of marrying the appellant. After ten days of marriage, the respondent went to United States of America while the appellant joined him at United States of America during August 1999. The appellant was a holder of Engineering Degree and she was keen to pursue higher studies at United States of America. Therefore, the respondent got her admission for pursuing M.E. Degree in Computer Software Engineering at Widner University during January 2000. That apart, the respondent also obtained sponsorship to financially support her to pursue higher studies in the said University.

3. It is the contention of the respondent that he had a normal and happy married life with the appellant for about 3 to 5 months after marriage. According to the respondent, few years before marriage, the mother of the appellant died and her father re-married in the middle of 2000, which, according to the respondent, had apparently disturbed the appellant very much and the respondent witnessed a change in her behaviour pattern thereafter. The appellant started picking up quarrel with the respondent even for trivial family dispute and was in the habit of throwing whatever articles she could get into her hand. On one occasion, the appellant got annoyed and threw the shoes on the respondent. During yet another quarrel, the appellant threw the sacred thali towards the respondent, which has caused acute mental disturbance to him. At the height of her frustration, on one occasion, the appellant took a knife and threatened the respondent that she would cut her wrist and throw the blame on him. The appellant also made constant threat to dial the emergency police number '911' at United States of America, have the respondent arrested for domestic violence by hurting herself and to throw the blame on him. During the middle of 2002, owing to a trivial quarrel, the appellant became very aggressive that

she had taken a knife and threatened to commit suicide. When the respondent attempted to snatch the knife from her, the appellant cut his finger and therefore, he had to be taken to Spring Field Hospital for treatment where he was sutured as the cut injury was so deep. According to the respondent, the fact that he had very close proximity with his father, mother and grand parents and sister had apparently irked the appellant that she could not make any such bond with any one of her relatives, particularly her parents. Further, the appellant constantly apprehended that she was genetically pre-diagnosed to cancer inasmuch as her mother died due to the said disease. At the same time, the appellant blamed that the respondent did not sympathise with her for her imagined and non-existing disease.

4. The respondent would proceeded to contend that the appellant was in the habit of talking to the neighbours and request them to advise the respondent to behave properly. In fact, after hearing the appellant and the respondent, the neighbours only advised the appellant to change her behaviour pattern and this had infuriated her further. The cruel behaviour pattern of the appellant worsened day by day that the appellant would constantly shout towards the respondent by calling him "mundam" (senseless) or "porikki" (rogue) and other such filthy words without any provocation. As the relationship between the respondent and the appellant strained, during July 2003, they have come to India, met their respective family members and attempted to resolve the matrimonial dispute. During a meeting that had taken place, the appellant apologised for her erratic behaviour and had also written a letter of assurance and apology on 03.07.2003. Believing that the appellant would thereafter exhibit normal behaviour, the appellant and respondent went back to United States of America, however, after their return to United States of America, the appellant nagged the respondent with respect to the letter which she had written. As the relationship between the appellant and respondent did not improve after their return to United States of America and that the appellant constantly threatened and harassed the respondent with her cruel behaviour, during September 2004, the respondent came back to India to discuss with the family members again and took the letter of apology with him and gave it to the respondent on his return with an intention that giving back the letter written by her would calm down the appellant. However, it did not bring any change in the behaviour pattern of the appellant. The appellant used to scream and quarrel for more than half-an-hour, will take water and after about 10 minutes, continue to scold and shout towards the respondent without any justifiable cause. During such screaming, the appellant demanded the respondent to give up his contact with his friends, family members and relatives, which he refused. Even though the appellant and respondent returned to

United States of America during September 2004, the appellant withdrew the matrimonial company of the respondent during November 2004 and left for India. After her return to India, the appellant met the relatives and family members of the respondent and spoke ill about him. In spite of the same, the respondent came down to India during February 2005, met all the relatives of the appellant with an effort to patch up the matrimonial differences between him and the appellant. However, all the efforts taken by the respondent to bring the appellant back to the matrimonial home at United States of America failed as the appellant refused to join his matrimonial company. Therefore, the respondent has filed FCOP No. 440 of 2005 for dissolution of the marriage solemnised between him and the appellant on 01.07.1999 on the ground of cruelty.

5. The appellant has filed a Counter affidavit stating that on 28.06.1998, the family members of the appellant met the family members of the respondent at Thirupathi Devasthanam at T. Nagar. After discussion and deliberations among the family members of both sides, on 01.07.1999, the marriage between the appellant and respondent was solemnised as per Hindu rites and customs. Soon after the marriage, within ten days, the respondent left India to United States of America leaving the appellant with her mother-in-law at Paganeri, Madurai. Thereafter, the appellant left India to United States of America on 20.08.1999. The appellant admitted that after reaching United States of America, during August 1999, she applied to Widner University for pursuing Master Degree in Computer Science for which she got full sponsorship (Graduate Assistanceship). However, it was contended that the respondent never helped her to pursue her higher education, on the other hand, the respondent insisted the appellant to go for a job in United States of America to accumulate more wealth, which in fact was one of the conditions imposed by the parents of the respondent before marriage. Accordingly, the appellant went for an employment in Sanchez Computer. The appellant would further state in the counter affidavit that in fact she lived happily with the respondent in United States of America without any qualm or quarrel and she also moved freely with the neighbours. According to the appellant, the respondent was under the influence and control of his parents and he used to blindly follow whatever dictated by his parents in all matters including personal life, financial matters, investments etc., and he will not discuss anything with the appellant. Even though the appellant offered to render some assistance to the respondent in financial matters, he will not accept it. Even the present petition for dissolution of the marriage was signed and filed by the respondent only at the instigation, compulsion and pressure of his mother and not on his own. In fact, the respondent has no interest to prosecute the present petition and that is the

reason why he did not attend all the hearings in the present case.

6. The appellant would contend that on 11.06.2003, she along with the respondent came to India to attend the marriage of the sister of the respondent and not for any other reason, which is evident from the passport entries of the respondent. The respondent, for the reasons best known, has given incorrect dates in para No.6 of the Petition with respect to the solemnisation of the so-called marriage for which the appellant and respondent came to India. Further, after the marriage, the appellant and the respondent came to Chennai and stayed with her parents. At that time, the father of the appellant wanted the appellant and the respondent to visit Sri Paramahansa Nithyananda Swamigal, Bangalore to get his blessings on the first marriage anniversary. Accordingly, the appellant and the respondent went to Bangalore and got the blessings of the Swamiji. The respondent did not inform his parents about the visit to Bangalore and this had irked the parents of the respondent. In effect, it is contended that the appellant and the respondent lived happily and there is absolutely no misunderstanding between them.

7. The appellant would further state in the counter affidavit that during one such visit to India, she went to Madurai and stayed along with the parents of the respondent. During such stay, she was compelled and forced to sign a letter which was drafted by the parents of the respondent. The appellant was threatened that if she did not sign the letter, she will not be permitted to accompany the respondent to United States and they will proceed to obtain a decree of divorce annulling their marriage. It is in those circumstances, according to the appellant, she had signed a letter on 03.07.2003 and the said letter was not written by her on her own volition. After signing the letter, the appellant and the respondent left India to United States of America on 04.07.2003 where they lived happily. The relationship between the appellant and the respondent was cordial. During September 2004, the respondent alone visited India to finalise the sale transaction with respect to purchase of a flat in Bangalore, India. At that time, it was stated by the respondent that it was not worthwhile for both of them to visit India to finalise the purchase of apartment at Bangalore and therefore, the respondent left the appellant in United States and he alone visited India. After returning to United States of America, the respondent wanted the appellant to go back to India to attend certain ceremonies in their house. Believing such version of the respondent, the appellant came down to India and stayed with her mother-in-law. At this juncture, the respondent portrayed a peculiar behaviour that he did not even attend her phone calls

or e-mails for no reasons. It is at this stage the parents of the respondent instigated the respondent to file the present Petition for dissolution of the marriage. According to the appellant, her marriage with the respondent was solemnised at Kilapungudi, Sivagangai District and after the marriage, appellant and the respondent stayed at United States of America and therefore, the Family Court has no jurisdiction to entertain the Original Petition filed by the respondent for dissolution of marriage. Above all, it was stated by the respondent that the appellant and the respondent are young in their age, she did not commit any misdeed warranting the dissolution of the marriage. The appellant and the respondent lived happily and the present petition has been filed by the respondent at the instigation of his parents. The appellant is always ready and willing to live with the respondent and therefore, she prayed for dismissal of the Original Petition.

8. The appellant has filed an additional counter affidavit in which she had stated that during her stay at United States of America, she had met the maintenance of the family through the salary she had earned out of her employment in Sanche Computer Associates, Philadelphia. It was also contended that the death of her mother or the re-marriage of her father has nothing to do with the alleged change in her behavioural pattern and that she behaved normally and reasonably. The appellant never picked up any quarrel with the respondent as alleged or threw the articles, including shoes towards him. The appellant also denied that she had taken a knife and pointed it towards her wrist and threatened the respondent that she would commit suicide. At no point of time the appellant threatened the respondent that she would call '911' the emergency police number to give a complaint against the respondent for domestic violence. In fact, only on going through the petition did the appellant is aware of the fact that the number 911 is an emergency Police telephone number available in United States of America. The allegation that the respondent suffered a cut injury and was admitted in Springfield Hospital is true, but she was in no manner responsible for such injury. The respondent, who was cutting cantaloup, accidentally cut his finger and it was not as alleged by the respondent. The appellant also denied the allegation that she was in the habit of conversing with their neighbours and friends and requested them to advise the respondent nor the neighbours advised her to behave properly. The allegation that the appellant apprehended that she is genetically pre-diagnosed to cancer as her mother died due to the said disease is false. According to the appellant, cancer is neither hereditary nor contagious. The appellant also contended that she never withdrew from the matrimonial company of the respondent on her own, but she was sent to India by the respondent to take part in certain ceremonies in the house of

the respondent at Madurai. In such circumstances, the appellant prayed for dismissal of the Original Petition.

9. The appellant also filed FCOP No. 910 of 2006 under Section 9 of the Hindu Marriage Act. In the Petition in FCOP No. 910 of 2016, she had reiterated the very same averments, which she has urged in the counter affidavit and additional counter affidavit filed in FCOP No. 440 of 2005 filed by the respondent and prayed for allowing the petition for restitution of conjugal rights.

10. The respondent has filed a counter affidavit for the petition filed by the appellant under Section 9 of The Hindu Marriage Act. According to the respondent, he is not aware of the expenses incurred by the father of the appellant for their marriage and that the entire expenses for commemorating the marriage at the native village could not have cost Rs.5 lakhs. The parents of the respondent gifted 35 sovereigns of gold, a diamond Mangalsutra worth Rs.2 lakhs, 12 kilograms of Silver ware, clothes, household articles etc., in tune with the custom of the community to which the appellant and respondent belong to. On the other hand, the jewellery brought by the appellant have been deposited into a Bank locker and she is at liberty to take back the same at any time. The respondent also denied that the appellant brought Rs.6 lakhs in the form of fixed deposit and Rs.6 lakhs in cash. In fact, a fixed deposit for Rs.5 lakhs brought by the appellant as a gift is still in the joint name of the appellant and the respondent in three different banks. Further, the two fixed deposits accumulate the interest accrued while the third fixed deposit remitted is utilised to pay the premium for the Life Insurance of the appellant. Further, the appellant was given Rs.6 lakhs as gift in cash and he has no knowledge as to what the appellant has done with that money.

11. It is further stated in the counter affidavit of the respondent that soon after the marriage, he left to United States of America as the appellant had to stay with her family during the Tamil month of Aadi. During August 1999, the respondent left India to United States of America, but it is false to state that the marriage life was peaceful and blissful. The parents of the respondent were in India and they have nothing to do with the breakdown of the marital life between the appellant and the respondent. In the counter affidavit, the respondent reiterated the abnormal behaviour pattern of the appellant, as narrated by him in the Original Petition. That apart, it was stated that the appellant threw the sacred thali towards him twice. The income which the appellant earned as salary through her employment was retained by her and she did not spend anything for maintenance of the family at United States of America. The respondent further referred to the

letter of apology and assurance dated 03.07.2003 written by the appellant and denied that she was made to write such a letter by his parents under threat and coercion. In the counter affidavit, the respondent once again reiterated the various averments relating to infliction of matrimonial cruelty by the appellant, which he made in the Original Petition for dissolution of marriage and prayed for dismissal of the petition filed by the appellant for restitution of conjugal rights.

12. Before the Family Court, in order to prove their respective averments made in FCOP Nos. 440 of 2005 and 910 of 2006, the respondent herein examined himself as PW1 and marked Exs. P1 to P20. The appellant examined herself as RW1 and marked Exs. R1 to R21. The Family Court, upon analysing the oral and documentary evidence observed that the conduct of the appellant had affected the normal marital life and inspite of persuasion by the respondent, she did not change her behavioural pattern. The Family Court also referred to the letter written by the respondent to his father-in-law requiring him to advise the appellant to behave properly and the father of the appellant also written a letter to the appellant and gave her advise. In spite of the same, there was no progress in the behaviour of the appellant and it is in those circumstances, during their visit to India, at a meeting of the family members, the appellant on her own had written a letter of assurance and apology. Even after writing such a letter, the appellant did not mend her behaviour. The Family Court also referred to the e-mail communications sent by the respondent and the stoic silence maintained by the appellant in not replying to any of those letters. The Family Court further held that the relationship between the appellant and the respondent was not normal and cordial and that the respondent was subjected to matrimonial cruelty by the appellant. Therefore, the Family Court accepted the case pleaded by the respondent and granted a decree of divorce by a common order dated 10.01.2007, while dismissing the petition filed by the appellant for restitution of conjugal rights. Aggrieved by the common order dated 10.01.2007 passed by the Family Court, the present appeals are filed by the appellant.

13. The learned counsel appearing for the appellant/wife would contend that at the time of marriage, the father of the appellant had paid Rs.10,00,000/- in cash, 180 sovereigns of gold and diamond jewels, silver articles weighing 33 kilograms and other household articles valuing Rs.5,00,000/- as per the customs prevailing in Nagarathar community. After the marriage, the respondent left India for United States of America leaving the appellant in Paganeri, Sivagangai District for one month. Thereafter, the appellant left India to United States of America and joined the matrimonial company of the respondent during

August 1999. It is the contention of the counsel for the appellant that the marriage life between the appellant and the respondent was peaceful and blissful. The appellant was also employed in a company called Sanchez Computer Associates at Philadelphia and contributed her earnings towards the maintenance of the family at United States of America. On 11.06.2003, the appellant and the respondent came down to India to attend the marriage of the sister of the respondent. However, as soon as the appellant reached Madurai, the grandparents of her husband started scolding the appellant in obscene language and compelled her to sign a letter failing which they threatened that they would take steps to dissolve the marriage solemnised with the appellant. It is under those circumstances, the appellant had written the letter dated 03.07.2003 and it will not bind her in any manner. The letter dated 03.07.2003 was not signed by the appellant on her own volition, but due to intimidation, threat and coercion by the family members of the respondent. Further, during September 2004, as directed by the respondent, the appellant returned to India and stayed in her mother-in-law's house at Madurai. It is at this juncture the behaviour of the respondent became so erratic that he evaded and avoided to talk to the appellant over phone and also did not reply to the e-mails sent. On enquiry, the appellant came to know that the respondent was in an illicit relationship with one Thillai Bagavathy whose marriage with her husband was not dissolved through Court of law. When this was questioned by the appellant during January 2005, the parents of the respondent threatened, humiliated and abused the appellant and had driven her out of the matrimonial home. Thereafter, several attempts were made by the appellant to establish contact with the respondent, but it went in vain. Therefore, it was contended by the counsel for the appellant that the matrimonial relationship between the appellant and the respondent was cordial and blissful till September 2004 when the appellant came to Madurai and stayed in the parents house of the respondent. If at all the matrimonial rift started, it was only during January 2005 when the appellant unearthed the illicit relationship between the respondent and the said Thillai Bagavathy and when it was questioned by her, she was driven out of the matrimonial home. According to the counsel for the appellant, the respondent was living with the said Thillai Bagavathy illegally when the marriage between the appellant and the respondent was subsisting. The respondent, in order to legalise his illicit relationship, has filed the FCOP No. 440 of 2005 for dissolution of the marriage solemnised with the appellant on the ground of cruelty. Even though the respondent married the said Thillai Bagavathy and got it registered on the file of Sub-Registrar, Adyar, Chennai on 07.05.2008, in the marriage certificate, the address of the respondent was indicated as No.2, Kurinchi Street, Komathypuram, Melamadai,

Madurai - 625 020 and the address of Thillai Bagavathy was given as No.2A, Casa Chella, No.16, West Mada Street, Srinagar Colony, Saidapet, Chennai - 600 015. The fact remains that on the date of registration of their marriage, both the respondent and the said Thillai Bagavathy were in United States of America. Further, the respondent furnished his passport as an identity proof before the Sub-Registrar, Adyar in which the address of the respondent is indicated as 7047, Alvern Street, 128, Los Angeles, California, United States of America. Further, in the cause title given in FCOP No. 440 of 2005, the respondent has given his address as 3-7, Bloomfield Avenue, Drexlex Brook Apartments, Drexel Hill, Philadelphia, Pennsylvania, United States of America. Above all, when the respondent was examined before the Family Court, he has stated that he is residing at 4-14, Bloomfield Avenue, Drexlex Brook Apartments, Drexel Hill, Pennsylvania. Similarly, in the counter affidavit filed in the above CMA No. 1455 of 2007, the respondent has stated that he is a Computer Engineer working in Los Angels, which is in the State of California. Thus, according to the counsel appearing for the wife/appellant, the respondent/husband has wilfully and deliberately furnished false address to evade service of summons in the present appeals.

14. The learned counsel for the appellant would further contend that as against the common order dated 10.01.2007 passed by the Family Court, the appellant has filed the above appeals before this Court in which interim stay was granted on 09.07.2007. However, in violation of the order of interim stay granted on 09.07.2007, the respondent married the said Thillai Bagavathy on 07.05.2008 and therefore, the marriage solemnised between the respondent and the said Thillai Bagavathy is nothing but a bigamous act. Therefore, the appellant has filed C.C. No. 51 of 2012 on the file of Judicial Magistrate No.1, Sivagangai alleging commission of an offence of bigamy and the same is pending. The appellant also moved an application in CrI.MP No. 5213 of 2012 under Section 12 of the Protection of Women from Domestic Violence Act in C.C. No. 51 of 2012. By an order dated 14.09.2015 passed in CrI.M.P. No. 5213 of 2012, the respondent was directed to pay to the appellant a sum of Rs.3,000/- per month as maintenance and also to make arrangements for the appellant to stay at Madurai. Even the said order dated 14.09.2015 has not been complied with by the respondent till date. In fact, CrI.OP No. 15451 of 2012 and 12116 of 2012 were filed for quashing the proceedings in C.C. No. 51 of 2012 on the file of Judicial Magistrate No.1, Sivagangai. By an order dated 07.07.2015, this Court allowed CrI.OP No. 12116 of 2012 and quashed the proceedings in C.C. No. 51 of 2012. However, by the same order, this Court remanded the matter in so far as it relates to CrI.MP No. 5213 of 2012 which is the subject matter of CrI.OP No. 15451 of 2012 with a direction to dispose of the

same within four months. However, the respondent and his paramour, the said Thillai Bagavathi did not appear in the said case and therefore non-bailable warrants were issued against them and the same are pending.

15. Above all, it is contended by the learned counsel for the appellant that after marriage, the appellant stopped using her personal e-mail identity for any communications as directed by the respondent and she started using the e-mail id of the respondent namely pk_prem@hotmail.com. After the appellant joined a company called M/s. Sanchez Computer Associates at Philadelphia, she used the company e-mail id namely meenakshipremkumar@sanchez.com. As she did not have any personal e-mail id for her use, the respondent would send e-mails to her father's e-mail id namely nchidambaram99@yahoo.com when she was in India. However, some of the e-mail sent to the appellant through her father's e-mail identity have been marked as Exs. P5 to P15 and P20 before the Family Court. According to the counsel for the appellant, the respondent had hacked the e-mail identity of the father of the appellant and downloaded the communications sent to her. The author of the documents marked as Exs. P5 to P15 and P20 is the father of the appellant namely Chidambaram. The father of the appellant namely Chidambaram was not summoned as a witness for authenticating the aforesaid documents, however, they were marked as exhibits on the side of the respondent before the Family Court. Thus, it is the contention of the counsel for the appellant that the respondent had illegally tampered the e-mail identity of the father of the appellant, unauthorisedly downloaded some of the communications and marked them before the Family Court, much to the detriment of the appellant. Therefore, the learned counsel for the appellant would contend that the respondent is guilty of violation of Section 72 of The Information Technology Act, 2000 read with Section 340 of The Code of Criminal Procedure for hacking the e-mail ID of the father of the appellant namely N.Chidambaram whose e-mail ID is nchidambaram99@yahoo .com for which the respondent is liable to be prosecuted.

16. The learned counsel for the appellant would further contend that when the respondent has filed the Original Petition for dissolution of marriage on the ground of cruelty, the burden is heavy on his shoulders to prove that he was subjected to matrimonial cruelty by the appellant. However, there was no proof forthcoming from the respondent to establish that he was subjected to matrimonial cruelty by the appellant. Rather, the appellant has clearly stated in the counter affidavit that the marriage life was happier between them. To this effect, the appellant also deposed before the Family Court. However, the Family Court failed to appreciate the evidence of the appellant as RW1 and the documents marked on her side. By referring to an

e-mail dated 08th October 2009 sent by the respondent to the father of the appellant, marked as Ex.R20, the learned counsel for the appellant would contend that the contents of the e-mail would make it clear that the appellant and the respondent were living happily and the respondent did not raise any complaint against the appellant in the said letter. The learned counsel for the appellant therefore prayed for allowing these appeals.

17. Per contra, the learned Senior counsel appearing for the respondent would contend that the respondent examined himself as PW1 and marked documents to substantiate the averments he made in the Original Petition for dissolution of marriage. In order to substantiate that the respondent was subjected to matrimonial cruelty, the learned Senior counsel for the respondent relied on Ex.P12, an e-mail sent by the respondent to the father of the appellant wherein the respondent had highlighted some of the cruel behaviour of the appellant and in fact sought the help of his father-in-law to advise the appellant. Similarly, by referring to Ex.R21, an e-mail dated 07.04.2006 sent by the father of the respondent to the father of the appellant, the learned Senior counsel for the respondent would contend that in the said letter, the father of the respondent had narrated several instances of cruelty to which his son/respondent was subjected to at the instance of her daughter/appellant herein. Reference was also made to the cut injuries received by the respondent in his fingers and his eventual hospitalisation. To substantiate this, the respondent also filed Ex.P4, hospital records. Above all, the learned Senior counsel would contend that the appellant herself, admitting her misdeeds, had written a letter dated 03.07.2003 in which she had assured that she had realised her mistakes and that she will correct herself and will not repeat such events. According to the learned Senior counsel for the respondent, the appellant is not a lay-woman and she is a holder of M.E. Degree in Computer Software Engineering. Therefore, it could be presumed that she had written the letter knowing fully about the contents and the consequences it may have in her marital life. The letter dated 03.07.2003 is self-explanatory which would speak volumes about the past conduct of the appellant, particularly, her threat towards the respondent to commit suicide during her stay at United States of America. Even the appellant also admitted having executed the letter dated 03.07.2003, however, she would contend that she was compelled and coerced to write such a letter. In any event, the averments relating to cruelty have been clearly proved by the respondent which were rightly appreciated by the Family Court to conclude that the respondent is entitled for a decree of divorce. The learned Senior counsel for the respondent also invited our attention to the cross-examination of the respondent wherein the respondent had reiterated the averments relating to matrimonial

cruelty which he made in the Original Petition for dissolution of marriage and nothing could be elicited against him from the cross-examination.

18. Above all, the learned Senior counsel for the respondent would contend that the appellant, in her counter affidavit filed before the Family Court, did not deny the averments the respondent had made in the Original Petition and it would amount to an admission. However, as an after-thought, the appellant has filed an additional counter affidavit, in which she had formally denied the averments made in the Original Petition. In any event, the appellant and the respondent are residing separately for almost a decade, the respondent also got re-married and due to such re-marriage a child was also born and the child is presently aged about 7 years. Due to such long separation, the marriage life between the appellant and the respondent has irretrievably broken down and therefore, the learned Senior counsel for the respondent would contend that the order passed by the Family Court be sustained. Further, the appellant did not take steps to serve notice on the respondent intimating the interim stay granted by this Court in the above case for about 11 years. The delay in service of notice in the above appeals is on the part of the appellant. However, when the respondent came to know about the filing of the above appeals and the fact that it was posted under the caption "for dismissal" immediately, he had entered appearance through his counsel in the above appeals and there is no wilful negligence on the part of the respondent in contesting the above appeals.

19. Above all, the learned Senior counsel for the respondent invited the attention of this Court to the petition filed by the appellant in C.C. No. 51 of 2012 before the learned Judicial Magistrate No.1, Sivagangai against the parents of the respondent and his relatives with a prayer to punish them for having committed the offence under Section 494 of IPC and to award maximum punishment. Notwithstanding the filing of CC No. 51 of 2012, the appellant has given a complaint to the Inspector of Police, Sivagangai seeking return of her articles such as jewels and other household articles. On notice, the parents of the respondent offered to return all the jewellery, articles and other household articles belonging to the appellant and accordingly they were received by the appellant. To this effect, the statement of the appellant was recorded on 16.04.2012 by the Inspector of Police, Sivagangai in which the appellant herself had written that she acknowledges having received Rs.5 lakhs in cheque towards settlement of sreedhana money given on 01.07.1999 by her father in cash. Thus, on the one hand, the appellant received her belongings including sreedhana money given by her father at the time of marriage and on the other hand prosecuted the parents and relatives of the

respondent by invoking the provisions contained under The Protection of Women from Domestic Violence Act. First of all, the petition in C.C. No. 51 of 2012 filed by the appellant is not maintainable inasmuch as at the time of filing the said petition, the Family Court has passed the decree and Judgment dissolving the marriage solemnised between the appellant and the respondent, which is the subject matter of these appeals. While so, it is not known as to how the appellant could file C.C. No. 51 of 2012 before the Criminal Court implicating the parents and relatives of the respondent. Thus, according to the learned Senior counsel for the respondent, the filing of C.C. No. 51 of 2012 by the respondent is not in good taste, rather, it was motivated and intended to harass the parents and relatives of the respondent. In fact, the respondents in C.C. No. 51 of 2012 have filed Crl.OP No. 12116 of 2012 and 15451 of 2012 before this Court. This Court, by order dated 07.07.2015, allowed Crl.OP No. 12116 of 2012 holding that the parents of the respondent herein were unaware of the order of interim stay granted by this Court in the above appeals and quashed the proceedings in C.C. No. 51 of 2012. However, Crl.OP No. 15451 of 2012, which was filed against the Protection Order given in favour of the respondent in Crl.MP No. 5213 of 2012, was remanded back to the learned Judicial Magistrate No.I, Sivagangai for fresh consideration. After remand, the appellant did not appear before the learned Judicial Magistrate No.1, Sivagangai and therefore, Crl.MP No. 5213 of 2012 in C.C. No. 51 of 2012 was dismissed for non-prosecution. According to the learned Senior counsel for the respondent, the filing of the Criminal Complaint in the year 2012 against the respondent, his parents and relatives would speak volumes about the conduct of the appellant to harass the respondent and his family. The filing of the criminal complaint in the year 2012 is not in good faith. In this context, the learned Senior counsel for the respondent relied on the decision of the Honourable Supreme Court in K. Srinivas vs. K. Sunitha reported in 2015 (4) Law Weekly 471 to contend that the filing of false case after seven years of the Order passed by the Family Court is nothing short of an attempt on the part of the appellant to harass the respondent and his family members and it amounts to cruelty and it can also be taken note of to dissolve the marriage.

20. The learned Senior counsel for the respondent also would place reliance on the decision of the Honourable Supreme Court in the case of Dr. Mrs. Malathi Devi vs. B.V. Devi reported in (2015) 1 Law Weekly 775 to contend that the subsequent conduct of the spouse during the pendency of the matrimonial proceedings or thereafter can be taken into account to conclude the acts of cruelty perpetrated by one against the other. According to the learned Senior counsel for the respondent, the criminal prosecution launched by the appellant

against the respondent, his parents and relatives in the year 2012 would only disentitle the appellant to question the validity of the order passed by Family Court, besides that, it would expose that the appellant is only interested in harassing the respondent and nothing more.

21. As regards the Civil Miscellaneous Petition Nos. 19199, 19202, 19205, 19210 and 19213 of 2018 filed by the appellant pending the present Civil Miscellaneous Appeals, the learned Senior counsel for the respondent would contend that they are not part of the pleadings in the Original Petition. The relief sought for in these Miscellaneous Petitions were not the subject matter of the present appeals. The Family Court had no occasion to consider the relief sought for in these petitions. Above all, the relief sought for in these Petitions have no relevance to the present appeals. Notwithstanding the same, it was contended by the learned Senior counsel for the respondent that even though the appellant had alleged that the respondent had hacked the e-mail identity of her father and marked Exs.P5 to P15 and P20 before the Family Court, the appellant did not raise her little finger or made any objection at the time of marking those documents. Furthermore, the appellant herself filed some of those documents under Ex.R4, R7, R8, R9, R10, R11, R12, R13, R15, R16 and R17. The documents were marked before the Family Court without any objection whatsoever. Therefore, it is futile on the part of the appellant to file the instant Civil Miscellaneous Petitions alleging that the respondent had committed an act which is punishable under the Information Technology Act. It is also stated that the different address furnished by the respondent in these proceedings is due to change of place of residence and it cannot be called in question by the appellant. In any event, this Court, in exercise of Appellate Jurisdiction conferred under Section 19 of the Family Court Act, need not consider the relief sought for in these Miscellaneous Petitions and he prayed for dismissal of the same.

22. We have heard the learned counsel on either side at length and perused the materials placed on record. As we have dealt with the factual matrix of the case at great length, we refrain ourselves from repeating the averments and counter averments any further in this appeal. For the purpose of disposal of these appeals, some factual matrix which are absolutely germane and necessary are dealt with hereunder.

23. Before dealing with the rival contentions urged in these appeals, we deem it fit to take up the Civil Miscellaneous Petitions filed by the appellant pending these appeals. The appellant has filed the below mentioned Civil Miscellaneous Petitions seeking the relief (s) stated therein:-

CMP No. 19199 of 2018 in CMA No. 1455 of 2007

To direct the respondent herein to furnish his correct address in U.S.A. and his earnings as disclosed before the authorities in United States of America before this Court in the above CMA No. 1455 of 2007

CMP No. 19202 of 2018 in CMA No. 1455 of 2007

To permit the petitioner/appellant to raise additional grounds in the Memorandum of Grounds of Civil Miscellaneous Appeal in the above CMA No. 1455 of 2007 filed against the Judgment and Decree dated 10.01.2007 passed in FCOP No. 440 of 2005 by the Honourable I Additional Family Court, Chennai

CMP No. 19205 of 2018 in CMA No. 1455 of 2007

To direct the respondent to appear before this Court in the above C.M.A. No. 1455 of 2007 to explain access to the e-mail ID of N. Chidambaram, father of the respondent to produce Exhibits P5 to P15 and P20 and marked them as documents on his side before the Trial Court pending disposal of the above CMA No. 1455 of 2007

CMP No. 19210 of 2018 in CMA No. 1455 of 2007

To grant an interim direction, directing the respondent to pay to the petitioner/appellant an interim maintenance amount of Rs.5,00,000/- per month from the date of filing of FCOP No. 440 of 2005 that is from 28.02.2005 till date and continue to pay the same every month till the date of disposal of the above CMA No. 1455 of 2007.

CMP No. 19213 of 2018 in CMA No. 1455 of 2007

To pass an order for prosecution of the respondent under Section 72 of The Information Technology Act, 2000 read with Section 340 of The Code of Criminal Procedure for hacking the e-mail ID of N.Chidambaram nchidambaram99@yahoo.com tampering with his e-mails and producing the same as documents marked on his side as Exhibits P5 to P15 and P20 pending disposal of the above CMA No. 1455 of 2007.

24. It is contended by the appellant in para No.11 of the affidavit filed in support of CMP No. 19199 of 2018 that the respondent was in illicit relationship with one Thillai Bagavathy and he started living with the said Thillai Bavavathy even during the subsistence of her marriage with the respondent. The appellant also would contend that the said Thillai Bagavathy deserted her husband and was living with the respondent herein

illegally without getting the marriage dissolved with her husband. At the same blush, the appellant herself admitted that the respondent and the said Thillai Bagavathy got married subsequently on 07.08.2008. In fact, the learned Senior counsel for the respondent produced a copy of the Judgment dated 13.04.2007 passed by the Principal Judge, Family Court, Chennai in FCOP No. 2618 of 2006 filed by one Mr.V. Marirajan and the said S. Thillai Bagavathy under Section 13-B of The Hindu Marriage Act, 1955. The Judgment dated 13.04.2007 indicate that by mutual consent, the marriage solemnised between the said Marirajan and Thillai Bagavathy on 06.11.2000 was dissolved on their filing the Petition under Section 13-B of The Hindu Marriage Act. Therefore, the argument of the appellant that the said Thillai Bagavathy was living with the respondent illegally or the marriage between the said Thillai Bagavathy with her husband was still subsisting cannot be countenanced. In any event, these are subsequent events which had taken place after the order was passed by the Family Court and they cannot be attached any significance. Even otherwise, the factum of re-marriage between the respondent and the said Thillai Bagavathy is not the subject matter of these appeals. These appeals emanates out of an order passed by the Family Court dissolving the marriage solemnised between the appellant and the respondent and dismissing the petition filed by the appellant under Section 9 of The Hindu Marriage Act, 1955. Therefore, we are only required to see as to whether the order passed by the Family Court can be sustained or not. While so, the relief sought for in these Civil Miscellaneous Petitions have no nexus or alien with the Memorandum of Grounds of Appeal raised by the appellant. Further, as rightly pointed out by the learned Senior counsel for the respondent, the averments made in the above Civil Miscellaneous Petitions are not part of the pleadings before the Family Court and the Family Court had no occasion to consider the same. While so, in exercising the jurisdiction conferred under Section 19 of the Family Courts Act, this Court cannot appreciate the averments made in the Civil Miscellaneous Petitions referred to above. At any rate, the relief sought for in the above Civil Miscellaneous Petitions have no nexus for consideration in these appeals, which are focussed towards the correctness or otherwise of the order passed by the Family Court. Even otherwise, the documents under Exs. P5 to P15 and P20 were marked without any protest or objection by the appellant before the Family Court and therefore, the appellant cannot be granted any relief as prayed for in these miscellaneous petitions. In such circumstances, we are not inclined to grant the relief sought for in these Civil Miscellaneous Petitions and they are only liable to be dismissed. Accordingly, Civil Miscellaneous Petition Nos. 19199, 19202, 19205, 19210 and 19213 of 2018 are dismissed.

25. In the Original Petition filed by the respondent before the Family Court, he had alleged that shortly after the marriage, the matrimonial rift had commenced and the appellant was in the habit of scolding the respondent by using singular words and also in obscene words, for no reason. It is further stated that the appellant was in the habit of hurling whatever articles that could come into her contact, including shoes, towards him. At the height of frustration, on one occasion, she had removed and thrown the sacred thali towards the respondent. Reference was also made to the frequent threat of the appellant that she would dial '911' emergency police number and give a complaint of domestic violence against the respondent. The respondent also cited an incident during which the appellant threatened him by attempting to cut her wrist. When the respondent attempted to snatch the knife from her, the appellant caused deep cut injuries in his fingers and he was to be hospitalised and sutured for the wounds. To substantiate the same, the respondent has marked Ex.P4, medical records. In the original petition, the respondent also would contend that the appellant was in the habit of talking to the neighbours and request them to advise the respondent, but the neighbours, upon hearing both, had only advised the appellant to behave properly. The respondent also made reference to the fact that the appellant will not allow him to sleep peacefully by demanding that he give up his contact with his parents and relatives and thereby caused him mental agony. The respondent also made reference to the letter of assurance and apology written by the appellant on 03.07.2003 accepting her misdeeds.

26. Unfortunately, in the counter affidavit filed by the appellant at the first instance, she did not deny the averments the respondent had made in the Original Petition, rather, she had complained and portrayed the respondent in poor light and contended that the respondent had made false and misleading statement in the Original Petition with respect to the dates on which certain incidents had taken place. In the counter, she admitted having signed a letter of apology and assurance on 03.07.2003, which was marked as Ex.R6. In effect, in the counter affidavit, the appellant did not even deny the events relating to the so-called threat she had given to the respondent that she would dial the emergency police number, the incident in which the respondent had received cut injuries in his fingers etc., The counter affidavit was filed on 27.07.2005. Thereafter, on 30.11.2005, the appellant has filed additional counter affidavit in which she had consciously chosen to deny the averments made in the Original Petition filed by the respondent. The appellant also in the additional counter stated that she never withdrew from the matrimonial company of the respondent on her own and that she is ready and willing to live with the respondent. At the same blush, the appellant also

stated that the Family Court at Chennai has no jurisdiction to entertain the Original Petition filed by the respondent. However, the appellant herself filed a Petition under Section 9 of The Hindu Marriage Act, 1955 for restitution of conjugal rights on 10th April 2006 in which she has stated that she is residing in Chennai and therefore, the Family Court at Chennai has jurisdiction to entertain the petition filed by her. In the Petition for restitution of conjugal rights, however, there was not a single whisper that the appellant is ready to join the matrimonial company of the respondent.

27. Having considered the above rival contentions urged by the appellant and the respondent, we are required to examine as to whether the marriage life between the appellant and the respondent was peaceful and blissful and whether the respondent was subjected to matrimonial cruelty at the instance of the appellant. It has to be stated that the marriage between the appellant and the respondent was solemnised on 01.07.1999 and during August 1999, the appellant joined the respondent in his matrimonial company at United States of America. According to the respondent, within 3 to 4 months of the marital life, there were disputes and quarrel that emanated between him and the appellant to which the appellant had largely contributed. On the contrary, the appellant would contend that the marriage life was free from any trouble and they lived happily and peacefully.

28. In this context, in the Original Petition, the respondent referred to several meetings that had taken place between the elders of the family members. On one such occasion, on 03.07.2003, the appellant written a letter of apology and assurance, which was marked by the appellant herself as Ex.R6, in which she apologised and assured of good behaviour, voluntarily. The letter dated 03.07.2003 reads as follows:-

"Assurance letter

Meenakshi Premkumar hereby promise to Mr. Premkumar that in the future, I will certainly not reopen the quarrels or incidents happened in the past between me and my husband and my husband's family members.

During the quarrel, I used to say that I will commit suicide leaving a letter blaming my husband as cause for it. On the advice of elders, I realize it is not correct and I hereby assure that I will correct myself and will not repeat such events.

Such a thing happens it is on my own and no body will be responsible for such events.

29. At the outset, the appellant did not deny or dispute having written such a letter, however, she contends that she was

forced and coerced to write such a letter. The appellant is learned and she is a holder of a Master Degree in Computer Software Engineering. It cannot be said that she is unaware of the consequences that may flow therefrom touching her matrimonial life. Even otherwise, assuming that the in-laws of the appellant have made her to write such a letter, the contents of the letter only indicate that there was a simmering matrimonial rift between the appellant and the respondent and during such quarrel, the appellant threatened to commit suicide. If really the appellant did not cause such threat during the matrimonial relationship with the respondent, there is no necessity to say so in the letter under Ex.R6. Therefore, this letter only fortifies the averments of the respondent that the matrimonial life was not smoother and peaceful owing to the behavioural pattern of the appellant. It is also pertinent to mention that this letter was written by the appellant on 03.07.2003 and even thereafter, the appellant and the respondent lived together. Of course, it is contended by the respondent that even thereafter, the appellant did not reform herself and the matrimonial life was not free from any confrontation between the couple.

30. In the original petition filed by the respondent, reference was made by him to the fact that the appellant, during a trivial matrimonial quarrel, scolded him as "mundam" (senseless) or "porikki" (rogue). In fact, in one of the e-mail communications sent by the father of the respondent, to the maternal uncle of the appellant, which was marked as Ex.R21, the father of the respondent had stated that the appellant was in the habit of calling his son, the respondent, in singular. The relevant portion of Ex.R21 dated 07.04.2006 reads as follows:-

"Sorry to say that she is a very good liar and cunning. Nowadays, she started talking to prem without manners as vada, poda, ennada....

We came to know from prem that you said during the last night that "as I am the mama of mala I have the rights to advise her" as considering this, I am explaining you the whole matter in expecting help from you.

You pls.. strongly advise her to lead life smoothly with prem atleastttt. Pls see to that mala does not create any problem when prem comes back from miniapolls by Sunday afternoon. (USA timing).

If she creates any problem, sorry to say that I have to take a strong decision, hope you understand the situation and solve the problem..."

31. Thus, the respondent has established the averments which he had made in the Original Petition that the appellant was in the habit of scolding him in vulgar or singular words.

It appears that this is one of the tip of the ice bergs. There are several other communications exchanged and emanated between the appellant, respondent and their respective parents and they need not be dealt with elaborately in this appeal. Suffice it to state that Ex.R6 and R21 speak volumes about the simmering matrimonial rift between the appellant and the respondent at United States and on coming to know about the same, the father of the respondent had sought the help and assistance of the father and relative of the appellant to resolve the matrimonial row between his son and the appellant. Therefore, it is evident that prior to the filing of the Original Petition, the relationship between the appellant and the respondent was not smooth, rather, it had strained. In such circumstances, the averment of the appellant that there was no dispute or differences at all between her and the respondent and that the matrimonial life was wholly peaceful and blissful cannot be accepted.

32. Before the Family Court, the appellant and the respondent have examined themselves and both of them were cross-examined at great length. We have gone through the chief examination as well as cross-examination of the appellant and the respondent. They did not examine any other independent witness to substantiate their respective averments. The Family Court also dealt with the cross-examination of appellant and the respondent at great length. In fact, the Family Court also made reference to the letter of assurance and apology given by the appellant under Ex.R6. The Family Court further made reference to Ex.R13 a letter of advice dated 21.12.2004 written by the father of the appellant herself on receipt of an e-mail sent by the respondent complaining about the conduct of the appellant. The Family Court also referred to another communication dated 27.11.2005 sent by the respondent to the appellant in which he had complained about the conduct of the appellant, however, the appellant did not send any reply to the same. Referring to Exs. R7 to R16, e-mails sent by the respondent to the appellant, the Family Court concluded that the appellant, for the reasons best known to her, did not send any reply to those communications. On analysing the documentary evidence, the Family Court has come to a conclusion that these communications would only show that there was a matrimonial rift between the appellant and the respondent and that the appellant was not interested in leading a peaceful and blissful life with the respondent. The Family Court also concluded that by reason of the erratic behaviour of the appellant, the respondent was subjected to matrimonial cruelty and therefore granted a decree of divorce. On perusal of the order passed by the Family Court, coupled with the deposition of respondent, as PW1 and that of the appellant, as RW1, we are unable to take a different view than the one arrived at by the Family Court. In effect, we conclude that the

respondent was subjected to acute mental agony and hardship by the appellant, which amounts to matrimonial cruelty.

33. The learned Senior counsel for the respondent brought to our notice the criminal prosecution launched by the appellant in the year 2012 against the parents and relatives of the respondent alleging that she was subjected to domestic violence. It is to be pointed out that even according to the appellant, she is residing separately from January 2005. The Family Court also, by the order, which are impugned in these appeals, granted a decree of divorce dissolving the marriage solemnised between the appellant and the respondent on 10.01.2007. Challenging the same, the appellant also filed the present Civil Miscellaneous Appeals in the year 2007. While so, the criminal prosecution launched by the appellant against the respondent, his parents and her relatives in the year 2012, is clearly an after-thought. In this context, the learned Senior counsel for the respondent relied on the oft-quoted decision of the Honourable Supreme Court in K. Srinivas vs. K. Sumitha reported in 2015 (4) Law Weekly 471 to drive home the point that filing false complaint by one of the spouse can be regarded as an attempt to inflict matrimonial cruelty and on that ground the other spouse is entitled for dissolution of marriage on the ground of cruelty. In that case, the wife has preferred a criminal complaint against the husband and seven members of the husband's family and based on which the husband and family members were arrested and remanded to judicial custody. After trial, the husband and family members were acquitted in the criminal proceedings and the judgment of acquittal had reached finality. Based on these facts, the Family Court allowed the petition filed by the husband for divorce. On appeal by the wife, the High Court reversed the order of the Family Court against which the husband has filed a further appeal before the Supreme Court. The Honourable Supreme Court held that the criminal complaint preferred by the wife was a contrived after-thought and therefore, the High Court ought not to have reversed the order of the Family Court. It was further held that the respondent/wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the husband and her in-laws and such conduct unquestionably constitutes cruelty as postulated in Section 13 (1) (i-a) of The Hindu Marriage Act. In Para Nos. 5 to 7 of the above decision, it was held by the Honourable Supreme Court as follows:-

"5. The respondent wife has admitted in her cross-examination that she did not mention all the incidents on which her complaint is predicated in her statement under Section 161 Cr.P.C. It is not her case that she had actually narrated all these facts to the investigating officer, but that he had neglected to mention them. This, it seems to us, is clearly

indicative of the fact that the criminal complaint was a contrived. We affirm the view of the High Court that the criminal complaint was "ill advised". Adding thereto is the factor that the High Court had been informed of the acquittal of the appellant husband and members of his family. In these circumstances, the High Court ought to have concluded that the respondent wife knowingly and intentionally filed a false complaint, calculated to embarrass and incarcerate the appellant and seven members of his family and that such conduct unquestionably constitutes cruelty as postulated in Section 13 (1) (i-a) of the Hindu Marriage Act.

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

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

34. The Honourable Supreme Court also in yet another decision rendered in (K. Srinivas Rao vs. D.A. Deepa) reported in (2013) 5 SCC 226 held that false complaint preferred by the wife can be taken note of in the matrimonial proceedings to dissolve the marriage on the ground of cruelty. In that case, the wife has given a Criminal complaint against the husband and his family members specifically alleging that the mother-in-law has forced her to sleep with her father-in-law. Subsequently, the complaint turned out to be a false and it was stated by the wife that she has given such complaint out of frustration against the husband's refusal to have cohabitation. The Supreme Court held that such a conduct of the wife in giving a complaint and making unfounded, indecent and defamatory allegation against her mother-in-law, filing revision seeking enhancement of the sentence and also filing appeal questioning the judgment of acquittal awarded to the husband and in-laws only indicates that

the wife had made all attempts to ensure that the husband and his parents were put in jail and also have the husband removed from his employment, which act of the wife, certainly constitutes matrimonial cruelty. In Para Nos. 27 and 28 of the above decision, the Honourable Supreme Court held as follows:-

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

28. Pursuant to this complaint, the police registered a case under Section 498-A of IPC. The appellant husband and his parents had to apply for anticipatory bail, which was granted to them. Later, the respondent wife withdrew the complaint. Pursuant to the withdrawal, the police filed a closure report. Thereafter, the respondent wife filed a protest petition. The trial court took cognisance of the case against the appellant husband and his parents (CC No. 62 of 2002). What is pertinent to note is that the respondent wife filed criminal appeal in the High Court challenging the acquittal of the appellant husband and his parents of the offence under the Dowry Prohibition Act and also the acquittal of his parents of the offence punishable under Section 498-A of IPC. She filed Criminal revision seeking enhancement of the punishment awarded to the appellant husband for the offence under Section 498-A IPC in the High Court, which is still pending. When the criminal appeal filed by the appellant husband

challenging his conviction for the offence under Section 498-A IPC was allowed and he was acquitted, the respondent wife filed Criminal Appeal in the High Court challenging the said acquittal. During this period the respondent wife and members of her family have also filed complaints in the High Court complaining about the appellant husband so that he would be removed from the job. The conduct of the respondent wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of the sentence awarded to the appellant husband, in filing appeal questioning the acquittal of the appellant husband and acquittal of his parents indicates that she made all attempts to ensure that he and his parents are put in jail and he is removed from his job. We have no manner of doubt that this conduct has caused mental cruelty to the appellant husband.

35. In this case, the appellant has filed C.C. No. 51 of 2012 on the file of Judicial Magistrate No.1, Sivagangai invoking the provisions contained under Section 12 of The Protection of Women from Domestic Violence Act. In C.C. No. 51 of 2012 an order dated 14.08.2015 was passed directing the respondent herein to pay to the appellant a sum of Rs.3,000/- per month as maintenance and also to make arrangements for the appellant to stay at Madurai. Challenging the same, Crl.OP No. 14541 of 2012 and 12116 of 2012 were filed before this Court. By an order dated 07.07.2015, this Court allowed Crl.OP No. 12116 of 2012 and quashed the proceedings in C.C. No. 51 of 2012. However, by the same order, this Court remanded the matter in so far as it relates to Crl.MP No. 5213 of 2012, which is the subject matter in Crl.OP No. 15451 of 2012, and to dispose of the same within four months. It is now brought to the notice of this Court that Crl.MP No. 5213 of 2012 filed by the appellant was dismissed for non-prosecution on 22.12.2016. In any event, launching criminal prosecution against the respondent, his parents and relatives of the respondent after the Family Court dissolved the marriage solemnised between the appellant and the respondent can be taken note of by this Court to conclude that the appellant intended to harass and humiliate not only the respondent but also his family members. Thus, the subsequent developments that had taken place in the present case, after the Family Court passed the common order dated 10.01.2007, which are impugned in these appeals, can very well taken note of by this Court to conclude that the intention of the appellant is not to rejoin the matrimonial company of the respondent, but to harass and humiliate the respondent and his family members in all forms and manifestations. In any event,

as we have noticed that the respondent had adequately proved the averments which he made in the Original Petition, he is entitled for a decree for dissolution of marriage.

36. For all the above reasons, we confirm the judgment and decree dated 10.01.2007 passed in F.C.O.P. No. 440 of 2005 and F.C.O.P. No. 910 of 2006 on the file of I Additional Family Court, Chennai. The Civil Miscellaneous Appeals fail and they are dismissed. No costs. Consequently, connected civil miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

rsh

To

The I Additional Principal, Judge,
Principal Family Court, Madras.

+4ccs to Mr.M.Arunkumar, Advocate SR.No.7024,8042

+2ccs to Mr.M.Ramamoorthi, Advocate SR.No.7078,7079

CMA No. 1455 & 1456 of 2007

GJ II(CO)
GMY(18/02/2019)

सत्यमेव जयते

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