

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 03-08-2020

JUDGMENT DELIVERED ON : 25-09-2020

CORAM :

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

CIVIL MISCELLANEOUS APPEAL NO.1859 OF 2016

—
(HEARD THROUGH VIDEO-CONFERENCING)

Pannerselvam .. Appellant/Petitioner

Versus

Sivagami .. Respondent/Respondent

Prayer:-

Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, against the fair and final order dated 26.02.2016 passed in H.M.O.P.No.435 of 2011 on the file of Principal Family Court, Coimbatore.

For Appellant : Mr.M.Liakhat Ali

For Respondent : Mr.Mukunth,
for M/s.Sarvabhauman Associates

JUDGMENT

R.SUBBIAH, J

This appeal is filed by the appellant-husband questioning the correctness and/or validity of the order dated 26.02.2016 passed in HMOP No.435 of 2011 on the file of Principal Family Judge, Coimbatore. By the said order, the Family Court refused to grant a decree of divorce as prayed for by the appellant-husband and dismissed the Original Petition filed by him.

2. The appellant-husband, as Petitioner, filed HMOP No. 435 of 2011 under Section 13 (i) (i) (a) of The Hindu Marriage Act before the Principal Family Court, Coimbatore and prayed to dissolve the marriage solemnised between him and the respondent-wife on 09.06.1993.

3. As per the averments made in the Original Petition, the marriage between the appellant-husband and the respondent-wife was solemnised on 09.06.1993 at Mani Mahal Thirumana Mandapam, Peelamedu, Coimbatore as per Hindu rites and customs. According to the appellant-husband, at the time of marriage, he never made any demand for customary "seervarisai" or dowry and he was unaware as to what were the golden ornaments presented to the respondent-wife by her parents. After marriage, the appellant-husband and the respondent-wife resided as a joint family along with the parents of the appellant-husband. The marriage life was happy for some time and thereafter, the matrimonial life strained due to the attitude of the respondent-wife. The respondent-wife portrayed a different attitude and quarreled with the appellant-husband and his mother very often. The respondent-wife habitually engaged in a quarrel with the appellant-husband, whereby the appellant-husband lost peace. Whenever a quarrel ensued, even for a trivial reason, the respondent-wife used to desert the matrimonial company of the appellant-husband and stayed in her parents house. It was the appellant-husband who used to convince the respondent-wife and bring her back to the matrimonial home every time. The respondent-wife did not like the relatives of the appellant-husband coming to the matrimonial home. Whenever any relative of the appellant-husband visit the matrimonial home, the respondent-wife portrayed a disrespectful attitude and thereby caused acute mental agony to him. On the other hand, if any of the relatives of the respondent-wife visited the matrimonial home, she used to treat them well. When this was questioned, the respondent-wife imposed a condition that the relatives of the appellant-husband should not visit the matrimonial home.

4. According to the appellant-husband, due to the matrimonial wedlock, a female and a male child were born. The respondent-wife did not care to nurture the children, with the result, the appellant-husband was constrained to put them in the hostel attached to the school. Even in the presence of the children, the respondent-wife used to utter abusive words towards the appellant-husband by stating that they are not born to them. It was stated by the appellant-husband that at the instigation of the mother and brothers -- Krishnasamy and Kalimuthu, the respondent-wife disrespected the appellant-husband and his family members. Even when the appellant-husband accompanied the respondent-wife to a public function, she was in the habit of portraying an indifferent attitude towards him and scolded him in the presence of his relatives. The appellant-husband remained calm and patient only with the hope of reformation of the respondent-wife and in the larger interest of the two children born to them. While so, on 08.01.2010, due to a trivial quarrel, unable to bear the onslaught of the respondent-wife, the appellant-husband himself left the

respondent-wife in her parents house with the hope that it will bring a change in her behaviour pattern. Thereafter, the respondent-wife's brother Kalimuthu and Krishnasamy have called upon the appellant-husband to come to their house and on their request, the appellant-husband went there. On such visit, the appellant-husband was scolded by the brothers of the respondent-wife as well as by Gandhimathi, wife of Krishnasamy and the appellant's mother-in-law threatened him alleging that he has not treated the respondent-wife well. During such quarrel, the appellant-husband was threatened with dire consequences and this was witnessed by the neighbours of the respondent-wife. After this incident, the appellant-husband filed H.M.O.P.No. 286 of 2010 before the Family Court, Coimbatore seeking to dissolve the marriage solemnised between him and the respondent-wife. However, at the instance of the well wishers, the appellant-husband withdrew the Original Petition. Thereafter, at the intervention of the elders in the family, the respondent-wife came back to the matrimonial home and the appellant-husband also received her unconditionally. While so, within a few days, the respondent-wife, once again, behaved very rudely and violently towards the appellant-husband and continued to scold him in filthy language. When this was reported to the brothers of the respondent-wife, they have physically assaulted the appellant-husband and caused him bodily injuries. Notwithstanding the same, they have also given a false complaint against the appellant-husband before the Singanallur Police Station. In such circumstances, the appellant-husband has filed the instant Original Petition for dissolution of marriage on the ground of cruelty.

5. Repudiating the averments made in the Original Petition, the respondent-wife has filed a counter statement before the Family Court and denied the averments made by the appellant-husband. According to the respondent-wife, at the time of marriage, 50 sovereigns of Gold and a sum of Rs.2,00,000/- was paid to the appellant-husband as dowry. Therefore, it is absolutely false to state that the appellant-husband did not demand any dowry or he was not aware of the Gold ornaments presented to the respondent-wife by her parents. It was further stated that the appellant-husband is a worthless person and it was her brothers who have supported him financially for running a business relating to transportation of petroleum products and calibration of petrol tankers in the name and style of Deivam Transports in the name of the appellant-husband. The respondent-wife's brothers have also commenced a business in the name and style of Deepankumar Transports in the name of the respondent-wife and it was also looked after by the appellant-husband. Above all, the respondent-wife's parents have also financially supported the appellant-husband to purchase an immovable property in Sridevi Nagar and for putting a

construction of a house in the land at Pappampatti.

6. The respondent-wife proceeded to state that she was having abundant love and affection towards the appellant-husband, as also the children and it is absolutely false to state that she quarreled with the appellant-husband or disrespected him and his mother. It was stated that the appellant-husband is a drunkard and under the influence of alcohol, the appellant-husband had assaulted the respondent-wife on several occasions. Notwithstanding the same, the respondent-wife lived with the appellant-husband and had taken care of him well. According to the respondent-wife, the appellant-husband not only assaulted her, but also driven her to her parents house to bring more money very often and therefore it is false to state that the respondent-wife often deserted the appellant-husband and went to her parents' house on her own. The respondent-wife also stated that for the sake of better education of the children, they were put in a Boarding school. Such an arrangement was made after a discussion with the appellant-husband in the larger interest of the children. It was also stated that the appellant-husband did not manage well the business arranged by the respondent-wife's brothers for him, and indulged in several mismanagement. The respondent-wife also referred to an occasion where the appellant-husband, during his visit to the parents' house of the respondent-wife, indulged in a quarrel and assaulted the brothers of the respondent-wife. Therefore, one of the brothers of the respondent-wife lodged a complaint to Singanallur Police Station, not once, but on many occasions. Based on one such complaint given by the brother of the respondent-wife to the All Women Police Station, Pollachi, the appellant-husband was arrested and remanded to judicial custody for two weeks. Therefore, it was stated by the respondent-wife that it was the appellant-husband who had wholly contributed for the matrimonial rift. The respondent-wife is an introvert by nature and she remained calm and quite always. In such circumstances, the respondent-wife prayed for dismissal of the Original Petition filed by the appellant-husband.

7. Before the Family Court, the appellant-husband examined himself as PW1 and marked Exs. P1 to P7. The respondent-wife examined herself as RW1, besides, examining the minor daughter born to the appellant-husband and the respondent-wife as RW2. The respondent-wife, however, did not mark any document. The Family Court, on considering the pleadings in the Original Petition filed by the appellant-husband and the counter statement of the respondent-wife, has concluded that, when the respondent-wife denied the averments made in the Original Petition, the burden is on the appellant-husband to disprove the same, but he failed to do so. A specific finding was rendered by the Family Court that mere allegation without sufficient

proof, leads to the inference that the appellant-husband failed to prove his allegation. The Family Court also referred to the Judgment of acquittal under Ex.P4 and the deposition of RW2 before the Criminal Court to conclude that it was the appellant-husband who treated the respondent-wife cruelly and he did not deserve a Judgment for dissolution of marriage in his favour. By referring to the deposition of PW1, RW1 and RW2, daughter, the Family Court concluded that the appellant-husband has failed to prove that he was subjected to matrimonial cruelty by the respondent-wife. On the other hand, the appellant-husband himself is the aggressor and he cannot take advantage for his own wrong. Therefore, the Family Court dismissed the Original Petition filed by the appellant-husband for dissolution of the marriage solemnised with the respondent-wife.

8. The learned counsel for the appellant-husband, at the outset, contended that the appellant-husband, through his pleadings in the Original Petition as well as his deposition before the Family Court, has proved the averments he made in the Original Petition. It was further contended that due to repeated complaints given by the brothers of the respondent-wife, purportedly at the instigation of the respondent-wife, the matrimonial differences have widened, leaving no scope for re-union between the appellant-husband and the respondent-wife. When the husband was sent to jail by a false complaint preferred by his brother-in-law, no prudent husband would, thereafter, prefer to live with his wife. In the present case, the appellant-husband was under incarceration for 22 days before getting bail. Even the respondent-wife admitted about the numerous complaints given by her brothers against the appellant-husband. The appellant-husband genuinely apprehends risk for his safety and security, especially when the respondent-wife and her brothers repeatedly gave criminal complaints against him with an intention to harass him. The repeated criminal complaints given by the respondent-wife's brother, themselves, would prove that the appellant-husband was subjected to matrimonial cruelty. Above all, the respondent-wife, in her counter affidavit, had stated that the appellant-husband is a 'worthless person' and such an onslaught made by the respondent-wife against her husband itself, would be sufficient to hold that the appellant-husband was treated cruelly by the respondent-wife. The learned counsel for the appellant-husband also contended that more than ten years have lapsed from 08.01.2010, and the appellant-husband and the respondent-wife are residing separately without any contact. The respondent-wife also, throughout the matrimonial proceedings, did not evince interest to join the appellant-husband in the matrimonial home. The respondent-wife also did not file any petition for restitution of conjugal rights expressing her intention to join the matrimonial company of the appellant-husband. Out of the two children born to the

appellant-husband and the respondent-wife, the son is with the appellant-husband, while the daughter is in the custody of the respondent-wife. Even the appellant-husband and the respondent-wife have divided their movable and immovable property and are residing peacefully and separately till now. Thus, such a long separation between them had in fact resulted in irretrievable breakdown of the matrimonial relationship. In such circumstances, no useful purpose would be served by denying a decree of divorce in favour of the appellant-husband. In this context, the learned counsel for the appellant-husband placed reliance on the decisions of the Supreme Court in the case of (i) A. Jayachandra Vs. Anilkumar, reported in 2005 (2) SCC 22 and (ii) Vinitha Sachina vs. Pankaj Pandi, reported in 2006 (3) SCC 778. Both these decisions have been relied on by the learned counsel for the appellant-husband to contend that in those cases, the Supreme Court has granted a decree of divorce by finding that there is an irretrievable breakdown of marriage between the parties. By referring to these decisions, the learned counsel for the appellant-husband contended that though irretrievable breakdown of marriage is not a statutory ground for granting a decree of divorce, in order to shorten the litigation and to save the parties from further agony, in the larger interest of justice, granting a decree of divorce is inevitable.

9. By referring to the decision of the Supreme Court in the case of K.Srinivasa Rao Vs. Deepa, reported in AIR 2013 SC 985 as well as the decision of a Division Bench of this Court in the case of Arun Kumar Jain Vs. Geetha, reported in 2014 (2) Madras Weekly Notes (Civil) 393 and of the Supreme Court in the case of K.Srinivasa Vs. K.Sunita, reported in 2014 (3) Madras Weekly Notes (Civil) 671 (SC), the learned counsel for the appellant-husband contended that in those cases, a false complaint has been given by the wife against the husband and in-laws. Having regard to the proved falsity of the criminal proceedings initiated by the wife, the Court has granted a decree of divorce by holding that the husband was subjected to matrimonial cruelty. According to the learned counsel for the appellant-husband, in the present case also, criminal complaints have been given against the appellant-husband and he was incarcerated for 22 days. The Criminal Case against the appellant-husband ultimately ended in acquittal. The learned counsel for the appellant-husband also submitted that the daughter has deposed before the Criminal Court, during which, she has not stated anything about the ill-treatment caused by the appellant-husband towards the respondent-wife or the overt act attributed against him in the criminal complaint. Therefore, the complaint given against the appellant-husband is not only false but intended to harass him. Hence, the learned counsel for the appellant-husband prayed this Court to set aside the order passed by the Family

Court and to allow this appeal by granting a decree of divorce on the ground of cruelty.

10. Per contra, the learned counsel for the respondent-wife, at the outset, contended that it was the appellant-husband, who was the aggressor and a person with a blame-worthy conduct. The appellant-husband who committed matrimonial cruelty against the respondent-wife cannot be allowed to take advantage of his own wrong. Even though the parents and brothers of the respondent-wife have immensely contributed for the purpose of the appellant-husband carrying on a business of transportation and supported him in all possible ways, the appellant-husband, due to his addiction to alcohol, had not only mismanaged the business affairs, but assaulted the respondent-wife and the minor children impatiently.

11. As regards the criminal complaints given against the appellant-husband, it is contended that the appellant-husband physically assaulted the brothers of the respondent-wife during a wordy quarrel and therefore, the injured brothers have given the criminal complaint. While so, it cannot be said that the criminal complaint given against the appellant-husband is false and motivated. Further, the criminal complaint was not given by the respondent-wife. The brothers of the respondent-wife, on their own, have given criminal complaint against the appellant-husband for his misconduct. Therefore, the respondent-wife cannot be found fault with, for the complaint given by her brothers. It is further stated that the daughter had deposed in favour of the appellant-husband before the Criminal Court only to ensure that there may not be any division in the family and to ensure that the family is united. Such a deposition was made by the daughter by taking into account that her brother is living all along with the appellant-husband and if she deposes against the appellant-husband, it will result in snapping of the relationship between the brother and the sister permanently. Even though the Criminal proceedings ended in acquittal of the appellant-husband, it has nothing to do with the matrimonial proceedings before the Family Court and it cannot be relied on by the appellant-husband to prove the averments he made in the Original Petition for dissolution of the marriage. In this context, the learned counsel for the respondent-wife placed reliance on the decision of the Supreme Court in the case of Mangayarkarasi Vs. M.Yuvaraj, arising out of SLP.(Civil) Nos.2704-2075 of 2019 (Civil Appeal Nos.1912-1913 of 2020, dated 03.03.2020, reported in 2020 (3) SCC 786 = 2020 (2) SCC (Cri) 232 = 2020 SCC Online SC 273, held that merely because the criminal proceedings initiated against the husband ended in acquittal, the same cannot be treated as a ground for granting a decree of divorce and it will be against the statutory provision.

12. The learned counsel for the respondent-wife further contended that the instances cited by the appellant-husband in the Original Petition, if read as a whole, do not constitute matrimonial cruelty. If at all, they can be regarded as a normal wear and tear in every family. The appellant-husband has not, through acceptable evidence, proved that he was subjected to matrimonial cruelty. The averments in the Original Petition are largely generic and not specific to establish cruelty. In this context, the learned counsel for the respondent-wife placed reliance on the decision of a Division Bench of this Court in the case of V.Usha Devi Vs. G.Dayalanathan, reported in 2017 SCC Online Madras 21257 and contended that instances of cruelty cannot be taken into consideration on the basis of an isolated incident. The cumulative facts and circumstances have to be looked into to see as to whether one of the spouses was subjected to matrimonial cruelty at the instance of the other. By placing reliance on the above decision, it is contended by the learned counsel for the respondent-wife that instances alleged by the appellant-husband, are not only false, but they will not make out a case for granting a decree of divorce on the ground of cruelty. The Family Court, on an extensive analysis of the oral and documentary evidence, has come to a right conclusion to dismiss the Original Petition filed by the appellant-husband for dissolution of marriage and it does not call for any interference by this Court. The learned counsel for the respondent-wife therefore prayed for dismissal of the Civil Miscellaneous Appeal.

13. We have given our thoughtful consideration to the rival submissions made on either side and perused the materials placed on record. On a consideration of the averments in the Original Petition, we could only see that the appellant-husband had harped upon or rather repeatedly referred to the fact that the respondent-wife scolded him or has abused him in filthy language. Reference was also made to the fact that the respondent-wife had abused the appellant-husband, disrespected his mother and also scolded him in the presence of relatives. Such a conduct on the part of the respondent-wife, according to the appellant-husband, had caused him mental agony. Even though such an averment was made by the appellant-husband, we could see that they are largely generic and not specific. Such kind of averments can be made by any one, but those averments are not sufficient to hold that a spouse was subjected to cruel treatment at the instance of the other. In this case, the appellant-husband has simply stated that the respondent-wife had scolded him or abused him in filthy language. However, the appellant-husband did not refer as to when, on what date, in whose presence or the circumstance during which the respondent-wife had abused him. In the absence of the above particulars, it cannot be considered that the respondent-wife had in fact

abused the appellant-husband. Further, the appellant-husband had specifically stated that he was abused or scolded in front of his relatives or well wishers. The appellant-husband had even stated that the respondent-wife disrespected his mother. However, for the reasons best known, the appellant-husband did not examine any one who was witness to such a phenomenon. Even the son of the appellant-husband, who is in the custody of the appellant-husband, or the mother of the appellant-husband or any of the neighbour was examined to state that the appellant-husband was harassed by the respondent-wife. Therefore, it is very difficult for us to accept that the respondent-wife had, in fact, scolded the appellant-husband in filthy language or disrespected him in any manner. The appellant-husband had built his case mainly on the ground that the respondent-wife scolded and abused him. To establish it, except the interested testimony of the appellant-husband, no one was examined. In such circumstances, we hold that the appellant-husband failed to establish the averments he made in the Original Petition.

14. The learned counsel for the appellant-husband placed much reliance on Ex.P4, judgment of acquittal dated 13.07.2012 passed in C.C. No. 177 of 2011 on the file of the learned Judicial Magistrate No.1, Pollachi and contended that the Judgment of acquittal passed by the Criminal Court itself would stand testimony to the fact that the criminal proceedings initiated against the appellant-husband are false and they amount to matrimonial cruelty. The criminal proceedings have been initiated against the appellant-husband only to harass him. It is also stated that the complaints were given purportedly at the instance of the respondent-wife and thereby the appellant-husband was subjected to acute mental agony. We are unable to accept such submission advanced on behalf of the appellant-husband. At the outset, the respondent-wife has not given any complaint against the appellant-husband. The complaint was given by Paneer Selvam, the brother of the respondent-wife in Crime No.17 of 2011 and after investigation, a charge sheet was filed for the offences under Section 498 A and 506 (i) of Indian Penal Code against the appellant-husband. It is seen from the Judgment dated 13.07.2012, marked as Ex.P-4 that the de-facto complainant therein had complained about the frequent demand of dowry or money made by the appellant-husband from the parents of the respondent-wife and whenever it was refused, the appellant-husband assaulted the respondent-wife. Further, on one such occasion, the appellant-husband made the respondent-wife to stand in the rain on 24.04.2011 for not yielding to his ugly demands. The learned Judicial Magistrate No.1, Pollachi, on appreciation of the evidence, including the evidence of daughter, has concluded that the prosecution failed to establish the case against the appellant-husband and acquitted the appellant-husband. Be that as it may. Merely because the

Criminal Court had acquitted the appellant-husband from the purview of criminal proceedings, it cannot be said that the complaint given against him is false or motivated. Further, the Criminal proceedings initiated against the appellant-husband cannot be relied on in the matrimonial proceedings by the appellant-husband to say that he was subjected to matrimonial cruelty. Unless it is established that the criminal complaint was given with false and irrelevant material particulars with an intention to solely harass the appellant-husband, the judgment of acquittal passed against the appellant-husband cannot be of any significance for consideration in this appeal. In any event, the criminal complaint was not given by the respondent-wife, but by her brother. Above all, we find that the appellant-husband, in the Original Petition, had asserted that he was assaulted by the brothers of the respondent-wife and driven him out of their house. If it is so, we are at a loss to understand as to what prevented the appellant-husband to give a complaint to the Police. The appellant-husband did not do so, rather, he harped on by stating that he was subjected to criminal prosecution vexatiously. In this context, the respondent-wife had clearly deposed before the Family Court that the appellant-husband had assaulted her brothers, not once but twice and therefore, they have earlier given complaint to the Singanallur Police Station. Therefore, the complaints given against the appellant-husband cannot be said to be baseless. The complaints have been given after the appellant-husband had physically assaulted the brothers of the respondent-wife. In such event, we are of the view that the appellant-husband is the aggressor and he had exhibited a blame-worthy conduct. While so, the appellant-husband cannot be expected to take advantage of his own wrong and seek for a decree of divorce to dissolve the marriage solemnised between him and the respondent-wife. In this context, the learned counsel for the appellant-husband placed reliance on the decision of the Supreme Court in the case of K.Srinivasa Rao Vs. Deepa, reported in AIR 2013 SC 985 and the decision of a Division Bench of this Court in the case of Arun Kumar Jain Vs. Geetha, reported in 2014 (2) Madras Weekly Notes (Civil) 393 and of the Supreme Court in the case of K.Srinivas Vs. Sunita, reported in 2014 (3) Madras Weekly Notes (Civil) 671 (SC). In those cases, it was established that the criminal complaint given against the appellant-husband was motivated and the wife also admitted having given the complaint without any truth. It was in those circumstance, it was held that the husband was subjected to matrimonial cruelty. In the present case, the appellant-husband was acquitted by the Criminal Court by giving benefit of doubt and there is nothing to suggest that the appellant-husband was maliciously prosecuted. Therefore, the aforesaid decisions cannot come to the aid of the appellant-husband to show that he was a victim of matrimonial cruelty at the instance of the respondent-wife.

15. The learned counsel for the appellant-husband contended that when the appellant-husband and the respondent-wife resided together, the appellant-husband used to handover various amount to the respondent-wife with an instruction to settle the third party-debtor. However, the respondent-wife, without handing over the amount, has caused disrepute to the appellant-husband in the midst of the creditors. Such an averment made by the appellant-husband was denied by the respondent-wife by stating that it is bald and vague. The appellant-husband has not come out with facts and figures as to what was the amount given, on what date it was given and to whom it was instructed to be paid. According to the respondent-wife, there was no such occasion when the appellant-husband handed over money to her with instruction to pay it to third party creditors. The Family Court, on analysing this aspect, has concluded that the appellant-husband has made a bald and vague averment without mentioning the quantum of amount, date and the person to whom it was instructed to be paid. The Family Court also noticed that except the interested testimony of the appellant-husband, there was no evidence brought on record to establish this averment. We are fully in agreement with such a finding of the Family Court. The appellant-husband also did not examine any independent witness to establish the fact that he had entrusted amount to the respondent-wife, but she failed to pay it to the third party creditors, thereby the creditors have pulled him up. Even assuming that the respondent-wife failed to pay the third party creditors the amount handed over to her by the appellant-husband, it cannot be taken into consideration to conclude that the appellant-husband was subjected to matrimonial cruelty by the respondent-wife. At best, this can be regarded as a normal wear and tear in each and every family. This trivial instance alleged by the appellant-husband, at any rate, cannot be considered by us to hold that the appellant-husband was subjected to matrimonial cruelty.

16. On a complete analysis of the averments made by the appellant-husband in the Original Petition, his deposition and the documentary evidence marked by him, we find that the averments made by the appellant-husband are not of such a nature warranting dissolution of the marriage solemnised between him and the respondent-wife. The averments made by the appellant-husband cannot be taken into account to hold that he was subjected to matrimonial cruelty by the respondent-wife.

17. The learned counsel for the appellant-husband relied on decisions of the Supreme Court in the case of (i) A.Jayachandra Vs. Anilkumar, reported in 2005 (2) SCC 22 and (ii) Vinitha Sachina Vs. Pankaj Pandi, reported in 2006 (3) SCC 778 and contended that in those cases, the Supreme Court has granted a decree of divorce by finding that there is an irretrievable

breakdown of marriage between the parties. It is true that in those cases, the Supreme Court had dissolved the marriage solemnised between the parties by holding that the matrimonial life between them had irretrievably broken down. Such an order has been passed by the Supreme Court in exercise of the powers conferred under Article 142 of the Constitution of India to do complete justice. The same power cannot be exercised by this Court in this appeal under Section 19 of The Family Courts Act to hold that the matrimonial relationship between the appellant-husband and the respondent-wife had irretrievably broken down. There was no amendment brought in the Statute to hold that irretrievable breakdown of marriage is also one of the grounds on which we can grant a decree of divorce in favour of a spouse. Unless suitable amendments are made to the relevant Statute, the power that was exercised by the Honourable Supreme Court cannot be exercised by this Court.

18. The learned counsel for the appellant-husband contended that the appellant-husband and the respondent-wife are residing separately for more than ten years, and the son is with the appellant-husband and the daughter is with the respondent-wife. It is also contended that movable and immovable properties were also divided among the couple and they are in possession of their respective asset. They are accustomed with their own way of living all these days, while so, keeping the matrimonial tie alive will not serve any purpose. It is also stated that the respondent-wife, all along, has no intention to join the matrimonial company of the appellant-husband. She has also not filed any petition under Section 9 of the Family Courts Act. Therefore, the learned counsel for the appellant-husband contended that the long and separate living of the couple must be allowed to continue by granting a decree of divorce. This submission of the counsel for the appellant-husband cannot merit acceptance. Merely because the appellant-husband and the respondent-wife are residing separately for more than ten years during the pendency of the matrimonial proceedings, it will not ipso-facto prompt us to grant a decree of divorce in favour of the appellant-husband. The appellant-husband has filed the Original petition on the ground of cruelty and not on the ground of desertion. Unless he establishes that he was subjected to matrimonial cruelty, he is not entitled to a decree of divorce. Further, it is always not necessary for the respondent-wife to come up with a petition under Section 9 of the Family Court Act to prove that she is ready and willing to join the matrimonial company of the appellant-husband. Even in the absence of such a petition, the evidence on record has to be considered to conclude the intention of the respondent-wife. In this case, in the counter statement filed before the Family Court on 29.12.2011, in para No.4, it was stated that the respondent-wife is having affection towards her husband and children and she

treated the appellant-husband with care and affection and never disrespected him. Further, in para No. 8, it was stated that the appellant-husband physically assaulted her, left her in her parents' house and never cared to take back her to the matrimonial home inspite of mediation. These averments, if read together, would only reveal the intention of the respondent-wife to join the matrimonial company of the appellant-husband. Therefore, we see no reason to hold that the respondent-wife has no intention to join the appellant-husband in the matrimonial home. We also notice that the appellant-husband and his son are residing separately and the minor daughter is in the custody of the respondent-wife. The minor daughter, in her deposition as RW2, has clearly stated that only in order to ensure that there is no further division in the family, she did not depose anything against her father in the Criminal Proceedings. This will only show that the minor daughter is ailing to see that the family is re-united so that she can live with her brother and father happily. The deposition of the minor daughter also indicates that the appellant - husband is not free from any blame worthy conduct and he had largely contributed for the matrimonial rift. In such circumstances, we see no reason to interfere with the well considered order passed by the Family Court. The Family Court also given very many reason to conclude that the appellant-husband failed to prove the averments he made in the Original Petition and we are in agreement with such a conclusion arrived at by the Family Court.

19. For all the reasons we have recorded hereinabove, we confirm the order dated 26.02.2016 passed in HMOP No. 435 of 2011 on the file of Principal Family Judge, Coimbatore. The Civil Miscellaneous Appeal therefore fails and it is accordingly dismissed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rsh/cs

To

1. The Principal Judge, Family Court, Coimbatore
 2. The Section Officer, V.R.Section, High Court, Madras.
- +lcc to M/s.Sarvabhauman Associates, Advocate, S.R.No.31748

CMA No.1859 of 2016

NRJK (CO)

CS/12/10/2020