

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 15-12-2020

Judgment delivered on : 25-01-2021

Coram :

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

Civil Miscellaneous Appeal Nos. 2296 and 2297 of 2013
and

CMP Nos. 6474, 14435 and 15444 of 2018

CMP No. 18531 of 2019

(Heard through video-conferencing)

J. Padmapriya .. Appellant in both appeals

Versus

S. Rajkumar ...Respondent in both appeals

Civil Miscellaneous Appeals filed under Section 19 of The Family Courts Act, 1984 against the fair and decreetal orders dated 11.01.2013 passed in FCOP No. 1747 of 2009 and FCOP No. 3167 of 2011 (transferred from Sub Court of Tindivanam in OP No. 79 of 2009) on the file of Principal Family Court, Chennai.

For Appellant : Mr. N.S. Sivakumar
in both the appeals

For Respondent : Mr. S. Nagarajan
in both the appeals

COMMON JUDGMENT

R. SUBBIAH, J

Both these appeals are filed by the appellant/wife assailing the common Order and Decree dated 11.01.2013 passed in FCOP No.1747 of 2009 and FCOP No. 3167 of 2011, in and by which, the Principal Family Court, Chennai granted a decree of divorce as prayed for by the respondent/husband in these appeals and dismissed the Original Petition filed by the appellant/wife for restitution of conjugal rights.

2. Before the Family Court, the respondent herein (husband) had filed F.C.O.P. No. 1747 of 2009 under Section 13 (1) (i-a) of the Hindu Marriage Act, for dissolving the marriage solemnised between him and the appellant on 30.08.2007 on the ground of cruelty.

3. On notice, the appellant (wife) has filed O.P. No. 79 of 2009 under Section 9 of The Hindu Marriage Act for restitution of conjugal rights before the Principal Sub Court, Tindivanam, which was subsequently transferred and re-numbered as FCOP No. 3167 of 2011 before the Family Court, Chennai.

4. The brief facts of the case, as could be unfolded from FCOP No. 1747 of 2009 filed by the respondent is stated hereunder.

5. (i) The marriage between the appellant and the respondent was solemnised on 30.08.2007 as per the Hindu rites and customs at Sulochana Bangaru Kalyana Mandapam, Tindivanam and it was also duly registered at the office of the Sub-Registrar, Teynampet, Chennai. According to the respondent, even before finalising the marriage proposal, the respondent and his parents have clearly explained everything to the appellant about their family background, customs and rituals followed by them. Agreeing to such proposal, appellant and her parents consented for the marriage. At the time of marriage, the respondent did not demand any dowry. Similarly, no jewels or any thing were given to the family of the respondent. Whatever was offered to the appellant by her parents, was as per their wish and choice. The jewels and articles given to the appellant by her parents, were not shown to the respondent. At the time of betrothal, the appellant was employed as Lecturer in SRM University. Even before the betrothal, she secured admission for pursuing M.E. (Communication System) at Anna University. During betrothal, when this was informed, the respondent and his parents agreed for the appellant to continue her course, even after the marriage. The respondent also paid tuition fee and also purchased a two-wheeler for the appellant to attend her course at Anna University, Chennai.

(ii) According to the respondent, after marriage, he and the appellant went to Munaar, Kerala for honey-moon. During such trip, the respondent informed the appellant about a pre-existing loan of Rs.7 lakhs availed by him to renovate his house so as to commence the matrimonial journey with the appellant. He also stated that the repayment of the loan amount will be credited directly from his salary savings account by his employer. According to the respondent, on hearing it, the appellant started behaving violently towards the respondent and stated

that he should not repay the loan amount from his salary and only his parents should repay the amount and settle the loan. Further, the appellant told the respondent that he should not spend single pie to his parents. If he spent any amount, she would lodge a dowry complaint against him. The respondent was shocked to hear such a version from the appellant during the honeymoon trip. It is his contention that by reason of such behaviour portrayed by the appellant during the honeymoon, it became a devil-moon. He was too shocked by such utterances from a newly wedded wife. In order to avoid unpleasantness, the respondent assured that all her needs will be looked after well and she need not bother about it. In spite of such assurance, the appellant repeatedly harped upon saying that she would lodge a complaint to the police stating that he has demanded dowry unless he stopped paying the loan amount and giving money to his parents.

(iii) The respondent thought that by passage of time, he could make the appellant understand the true sense of matrimonial relationship and that she will understand the same. With such an impression, the respondent did not reveal anything to his parents about the demand of the appellant during the honeymoon trip. Curiously, even after returning to the matrimonial home, the appellant did not engage herself in any basic household chores such as preparing coffee for the respondent and so on. Even if she was asked to do petty works in the house, she used to say that she was not a servant for them. Repeatedly, everyday, she will speak in a disrespectful way not only to the respondent but also his parents. The appellant, even called the respondent's father as bald-headed person without any respect or fear for elders. In the presence of in-laws and elders of the family, the appellant will normally sit with crossed-legs on the sofa. When the respondent told her that such behaviour in the presence of elders would be disrespectful, the appellant used to tell the respondent that she was not a slave.

(iv) It is stated by the respondent that on numerous occasions, in the presence of his parents and whoever is present on the spot, the appellant used to address the respondent in singular. On one occasion, when the respondent paid the insurance premium amount belatedly, the appellant described him as 'a beggar and fellow with no means'. Such utterance in the presence of Insurance Agent had caused untold mental agony to the respondent. On another occasion when respondent did not give money to the appellant immediately when she asked for it, the very next minute, she shouted at him to die immediately. The appellant refused to cook for the respondent or do any other house hold work and thereby enlarged the matrimonial rift between them.

(v) During the month of December 2007, a Panchayat was held for a compromise by the elders of both the families. When the family members of the appellant assured that she would behave like an affectionate wife in future, the respondent had taken the appellant back to the matrimonial home. The appellant's family also requested the appellant to refine herself. The appellant family took the appellant along with them during the Semester holidays in January 2008 so that she will have a change of mind to come back to the matrimonial home with a fresh mind. Thereafter, in the interest of the couple, the parents of the appellant decided to set up a separate house. Accordingly, a separate house was taken for lease at No.18, Venkatarathinam Street, Teynampet, Chennai-600 018, in the month of February 2008. Even after setting up a separate house, the appellant did not remain normal and exceeded tolerable limit. On 22.04.2008, she quarrelled with the respondent and the respondent was driven by the appellant out of the leased house by asking him to leave the premises at once. Unable to bear the insult, the respondent left for his parents house.

(vi) On 02.05.2008, family members of the appellant unexpectedly came to the house of the respondent's parents house and entered into a very big quarrel. The appellant's family members also assaulted the respondent and his family members. Unable to bear the same, the respondent and his parents kept quiet for few days. On attaining equanimity, the respondent gave a complaint on 07.05.2008 to E-3, Teynampet Police Station with reference to the criminal trespass, intimidation and assault with criminal force committed by the appellant's family members, but no action had been taken. On the contrary, it appears that the appellant and her family members lodged a false complaint before the Commissioner of Police, which was forwarded to E-3 Teynampet Police Station. On the basis of such complaint, on 09.05.2008, the respondent and his parents were taken to Police Station and made to wait for long hours. In the late evening, they were compelled to write on a paper that they would please the family of the appellant. The Police also compelled the respondent to go and live with the appellant on 09.05.2008. To avoid unwanted pleasantness, the respondent stayed with the appellant in the separate house set up at Teynampet. Even at that time, the appellant's father threatened the respondent with dire consequences. In fact, the respondent made an attempt on his life for committing suicide. Even thereafter, the appellant neither changed her behaviour nor intended to lead a peaceful marital life.

(vii) In the above circumstances, the respondent issued a divorce notice on 10.05.2008. As a sequel to such notice, the appellant lodged a complaint on 16.05.2008 based on which a criminal case was registered against the respondent and his

family members for offences punishable under Section 498-A of IPC and Sections 3 and 4 of Dowry Prohibition Act. The respondent therefore was constrained to obtain anticipatory bail. Thereafter, the appellant sent a reply notice dated 26.05.2008 to the divorce notice on 10.05.2008 sent by him. On the basis of the complaints given by the appellant, a charge sheet was also filed in C.C. No. 7538 of 2009 on the file of XVIII Metropolitan Magistrate, Chennai for the offence punishable under Section 498-A against the respondent and his parents. That apart, the respondent also filed Maintenance case in M.C. No. 2 of 2009. According to the respondent, the aforesaid criminal prosecution launched by the appellant against the respondent was intended to only harass him and his parents. Therefore, it was impossible for him to live with the appellant any longer. As the respondent/husband was subjected to continued matrimonial cruelty by the appellant, the respondent has filed the Original Petition for dissolution of marriage.

6. (i) Countering the averments made by the respondent in the Original Petition, the appellant-wife filed a counter statement before the Family Court denying the various averments made therein. According to the appellant, it is false to state that respondent did not demand any dowry. Similarly, she denied the averment that jewels and articles presented by her parents were not shown to the family of the respondent. The entire marriage expenses to the tune of Rs.15 lakhs were borne by the father of the appellant. The father of the appellant had given 55 sovereign of jewels, 3 kilograms of Silver, one Maruti Alto car to the respondent, and house hold articles worth several Lakhs of Rupees, as demanded by the respondent and his family at the time of marriage. The father of the appellant borrowed money from third parties and satisfied the unlawful demand made by the respondent and his family.

(ii) It is stated by the appellant that the statement made in the Original Petition that at the time of betrothal she was employed as Lecturer in SRM University, she got selected to pursue M.E. and the parents of the respondent gave their consent to continue such employment after marriage are false. On the other hand, it has been stated by the appellant that, after the marriage, she was compelled to discontinue her higher studies and to continue her employment at SRM University, so that income of the appellant could be utilised to meet out the debt incurred by the respondent. Even when the appellant requested the respondent to permit her to complete the higher studies so that she will be in a position to earn more, the appellant bluntly refused to accede to the same. According to the appellant, the respondent started demanding dowry to the tune of Rs.5 lakhs from her parents to meet out the debt.

(iii) The appellant and the respondent had gone to Munnar for honeymoon and the stay was arranged by the father of the appellant. The entire trip was arranged only with the reason that the appellant and respondent should start the matrimonial life with full happiness. The appellant denied the allegation of the respondent that when he had informed that he availed loan of Rs.7 lakhs from the Bank to upgrade the amenities in the house, she threatened the respondent that it has to be repaid only by his parents. She has also denied the allegation that she tortured the respondent during the honey-moon trip. On the other hand, it was the respondent who made demand of dowry. The appellant never questioned the income of the respondent nor the debt incurred by him before the marriage. She has also denied the other allegations that she refused to prepare coffee in the morning, sat cross-legged before the elders or disrespected the elders. She also denied that she scolded the father of the respondent as bald-headed person. She has given utmost respect to the respondent and the elders in the family. From the date of marriage, she has been performing all the household chores as a dutiful wife. She has also denied that on 22.04.2008, she quarrelled with the respondent and had driven him out of the lease hold home. Similarly, she has denied the allegation that appellant and her family members assaulted the respondent and his family members. According to the appellant, the respondent left her matrimonial company on 22.04.2008 and he did not return. On the other hand, the respondent had issued a notice dated 10.05.2008 for dissolution of marriage. It is in those circumstances, the appellant/wife had given a complaint, based on which, a case in Crime No. 1 of 2008 was registered on 16.05.2008 for the offence under Section 498-A of IPC. On coming to know about the registration of the case, the respondent and his parents obtained anticipatory bail. As the efforts taken by the appellant to join the matrimonial company of the respondent failed, she has filed the Petition for restitution of conjugal rights. In effect, the appellant prayed for dismissal of the original petition filed by the respondent for dissolution of marriage on the ground of cruelty, since the averments made therein are bald and vague and they are not such that it warrants dissolution of the marriage.

7. Before the Family Court, common evidence was let in both FCOP No.1747 of 2009 and FCOP No.3167 of 2011. In order to prove the averments made by him in FCOP No. 1747 of 2009, the respondent examined himself as PW1 and marked Exs.P-1 to P-24 on his side. The appellant examined herself as RW1 and marked Exs.R-1 to R-17. The Tribunal, on an analysis of the oral and documentary evidence, had come to the conclusion that the respondent had established that he and his family members were subjected to immense matrimonial cruelty by the appellant and granted a decree of divorce. In view of the order granting a

decree of divorce as prayed for by the respondent, the Family Court dismissed the Original Petition filed by the appellant for restitution of conjugal rights. Aggrieved by the same, these two appeals are filed by the appellant assailing the common order dated 11.01.2013 of the Family Court.

8. Pending appeal, the appellant has filed CMP No. 14435 of 2018 in CMA No. 2296 of 2013 for reception of additional documents. Prominent among the documents sought to be marked by the appellant, relates to: (i) Order passed in the Petition filed by the respondent and his parents for anticipatory bail before the learned Sessions Judge at Chennai, (ii) the final order passed in the petition filed by the appellant under the Protection of Women from Domestic Violence Act, (iii) the order passed by this Court in CRP No. 1 of 2013 and 4 of 2013 etc., The appellant also filed CMP No. 6474 of 2018 in CMA No. 2296 of 2013 to receive additional documents such as (i) Certificate of incorporation of a company run by the respondent (ii) the photograph showing the respondent with his second wife and the child born to them and (iii) order passed by this Court in CRP No. 3191 of 2012.

9. Similarly, the respondent has filed C.M.P. No. 15444 of 2018 in CMA.No.2296 of 2013 for reception of additional documents. The documents sought to be produced by the respondent are Income Tax Returns and audited report for the year 2017-2018 and 2018-2019, bank statements and medical bills to show that he is incurring expenses for the medical treatment of his parents. The respondent also filed CMP No. 18531 of 2019 to receive certain documents relating to mortgage loan availed by him from ICICI Bank.

10. At the outset, we are of the view that the Civil Miscellaneous Petitions filed by the appellant as well as the respondents for reception of additional documents pending these appeals, are not relevant for consideration by this Court. The present appeals arise out of the common order passed by the Family Court and therefore, we are only called upon to examine the correctness and/or validity of the order of the Family Court. For such purpose, the additional documents sought to be received during the appellate stage will not be of any use. Therefore, CMP.Nos.6474, 14435 and 15444 of 2018 and CMP.No.18531 of 2019 for reception of additional documents are liable to be closed.

11. The learned counsel for the appellant-wife submitted that the allegations made in the Original Petition are vague and bald. They disclose normal instances which would happen in every family and they are not such that it warrants dissolution of marriage. The respondent has not given any

specific instance to prove that he was subjected to cruelty. In fact, the appellant is a victim and the respondent was the one who subjected her to matrimonial cruelty.

12. The learned counsel for the appellant further submitted that it is the main allegation of the respondent that the appellant used to sit in the sofa with cross-legged in front of the elders of the family, she has not prepared coffee and she used to call the father of the respondent a bald-headed person. It is also alleged that the appellant insulted the respondent in the presence of third persons. The further allegation is that the appellant did not do any house hold chores when asked to do. Even in the house, set up by the parents of the appellant, she harassed the respondent and made him to leave the house. However, these allegations are without any substance and they are false and incorrect. All these allegations raised in the Original Petition by the respondent were categorically and emphatically denied by the appellant. Even according to the respondent, he was subjected to cruelty by the appellant in one form or the other in front of the neighbours, relatives and his colleagues. However, none of them were examined as a witness to prove the allegations in the Original Petition. This only indicate that the averments made in the Original Petition are nothing but false.

13. According to the learned counsel for the appellant, one of the allegations raised in the Original Petition filed by the respondent is that on 22.04.2008, owing to a quarrel, the appellant had driven the respondent out of the lease-hold house. However, when the respondent was cross-examined as P.W.1, he had stated that on 22.04.2008, a wordy quarrel took place between him and the appellant and at that time he was in his office. Therefore, he did not return to the lease-hold house on 22.04.2008 at all and the question of the appellant driving him out of the said house will not arise. As the respondent had left the appellant in lurch and did not return to the lease hold house, the appellant was constrained to give a complaint. As per the direction of the Police, the respondent-husband came to the lease-hold house on 09.05.2008 and left once again on 10.05.2008. On the same day, namely on 10.05.2008, the respondent had issued a notice for dissolution of the marriage. This indicates that it was the respondent who had subjected the appellant-wife to matrimonial cruelty and he alone has to be blamed for the matrimonial rift.

14. The main dispute between the parties, according to the learned counsel for the appellant, is with regard to demand for money alone. The appellant lodged a complaint relating to demand for dowry and based on the same, an enquiry was conducted. For the purpose of enquiry, the respondent and his

parents were called upon to the Police Station. Subsequently, the respondent and his parents applied for anticipatory bail and the same was objected to by the appellant by filing an intervening petition. According to the learned counsel for the appellant, such filing of intervention petition had become necessary to bring to the notice of the Court the correct facts relating to the matrimonial dispute between the parties and it cannot be said to be cruelty. It is the further submission of the learned counsel for the appellant, after investigation, charge sheet was filed in C.C.No.7538 of 2009 on the file of XVIII Metropolitan Magistrate, Chennai, against the respondent-husband and his parents, for the offence punishable under Section 498-A against the respondent and his parents. This only indicates that there is substance in the complaint given by the appellant which led to filing the charge sheet after due investigation. No doubt, the appellant-wife had also filed a petition under Section 12 of the Protection of Women from Domestic Violence Act and also a Maintenance Case claiming maintenance from the respondent-husband. According to the learned counsel for the appellant, all the proceedings initiated by the appellant are only to assert her legal right and therefore, they cannot be taken into account to hold that the respondent was harassed. Further, the various proceedings initiated by the appellant were intended to join the respondent in the matrimonial home, whereas, the Family Court has come to the conclusion that right from the date of marriage, the appellant started acting cruelly towards the respondent. In fact, the respondent has attempted to improve his case by adding imaginary allegations to the effect that the appellant had assaulted him and cut with blade, which were not found in the Original Petition or in the counter filed for the petition for restitution of conjugal rights. As the Original Petition has been filed with bald and vague allegations, the Family Court ought to have dismissed the Original Petition instead of granting a decree of divorce for dissolution of marriage. In this context, the learned counsel for the appellant placed reliance on a decision of a Division Bench of this Court in the case of Lingorin Vs. Gnanapragasi, reported in 2018 (8) CTC 40 to contend that bald and vague allegations are not sufficient for dissolution of marriage.

15. Further, the learned counsel for the appellant submitted that the respondent deserted the matrimonial house and abandoned the matrimonial company of the appellant and refused to cohabit with her. However, the Family Court erroneously held that the appellant had kept the premises under lock and key for more than a year and thereby prevented the respondent to enter into the premises to take back his belongings. The Family Court, without taking note of the fact that the respondent and the landlord of the premises had colluded with each other and filed a Rent

Control Original Petition, has come to the conclusion that the appellant-wife had locked the house, took the key with her and all the belongings of the husband were trapped inside the house. In any event, merely because the wife had kept the premises under lock and key, the same will not be a ground for granting a decree of divorce on the ground of cruelty. The rent control proceeding is a different proceeding in which the landlord filed RCOP NO. 513 of 2010 against which R.C.A. No. 48 of 2011 was filed and it ended in compromise between the landlord and appellant. On the other hand, Ex.P19, copy of the Plaint in O.S. No. 13665 of 2009 filed by the appellant shows that it was the appellant only who sought to restrain the respondent (husband) and the landlord from interfering with her peaceful possession and enjoyment of the plaint mentioned property as it was the appellant who had paid the rent to the landlord. In effect, it is the submission of the learned counsel for the appellant that no case has been made out for grant of a decree of divorce. The Family Court, without considering the above, interpreted all the documents on its own imagination and granted a decree of divorce. Therefore, the learned counsel prayed for setting aside the order of the Family Court and to allow this Civil Miscellaneous Appeals.

16. Countering the submissions of the learned counsel for the appellant-wife, the learned counsel for the respondent-husband submitted that, from the date of marriage, the appellant did not show any love and affection towards the respondent. When they went to Munnar for honey-moon, the appellant started harassing him and even slapped him during the honey-moon trip when he casually remarked about the availing of a sum of Rs.7 lakhs as loan and his obligation to repay it. The appellant threatened the respondent not to repay the amount from his salary and it was his parents who have to settle it. The appellant also prevented the respondent from even paying any amount to his parents, else, threatened that she would give a complaint to the police that the respondent and his parents are demanding dowry. Thereafter, when they returned to the matrimonial home, she behaved cruelly. The appellant did not do any household work and it was his mother who was made to do all the house hold work. The appellant called the respondent in singular, disrespected him and his parents even in front of others or whoever is present. In effect, the appellant always kept the respondent under threat that she would lodge complaint against the respondent and his parents complaining demand of dowry. True to such threats, the appellant had given numerous complaints against the respondent and they are nothing but false.

17. According to the learned counsel for the respondent, so far, the appellant has given five criminal complaints against the respondent and his family members. The

appellant poured mud on the respondent by going to the extent of stating that respondent's father sexually harassed her. Though it was alleged that the respondent demanded Rs.5 lakhs as dowry, the same was not stated in the complaint under Ex.R4 dated 06.04.2008 given by her. In the complaint lodged on 11.05.2008, Ex.R6, it was stated that the appellant was not allowed to live with the respondent. In the subsequent complaint dated 16.05.2008, based on which the case in Crime No. 1 of 2008 was registered by the All Women Police Station, Mylapore against the respondent and his family members for the alleged offence under Section 498-A of IPC, she alleged that the respondent and his parents have allegedly demanded dowry. Such a complaint of dowry harassment is false and imaginary. This has made the respondent and his parents prefer anticipatory bail before the learned Principal District and Sessions Judge, Chennai in CrI.M.P. No. 5009 of 2008 and until the grant of anticipatory bail, the respondent and his parents have gone into hide out to evade arrest. On coming to know about the filing of the Petition seeking anticipatory bail, the appellant filed an intervening petition on 21.05.2008 and strongly objected to grant of anticipatory bail to the respondent and his parents. The learned Principal District and Sessions Judge, Chennai granted anticipatory bail to the parents of the respondent, while dismissing the intervening petition for anticipatory bail filed by the respondent-husband. Therefore, the respondent filed CrI.OP No. 17294 of 2008 before this Court. Once again, on 22.07.2008, the appellant filed Intervening Petition before this Court and vehemently opposed the grant of anticipatory bail to the respondent with the sole object of sending him to jail.

18. The learned counsel for respondent also submitted that not satisfied with the filing of the Intervening Petition, the appellant filed CMP No. 6 of 2010 before the Court at Tindivanam, invoking the provisions of Protection of Women from Domestic Violence Act. Further, CMP No. 6 of 2010 was filed by the wife seeking permission to live at the shared house suppressing the fact that she is in possession of the leased house at Teynampet by keeping it under lock and key. In the said case, the respondent's elder brother Vijayakumar was also implicated as a party. The fact remains that at that time, the respondent's elder brother was at Japan and he has nothing to do with the domestic violence alleged to have been perpetrated towards the appellant in any manner. Further, the appellant also filed a Maintenance Case before the learned Judicial Magistrate No.1, Tindivanam under Section 125 of the Code of Criminal Procedure, seeking maintenance, suppressing the factum of her employment and the salary she receives. At this stage, the W-24, All Women Police Station, Teynampet, Chennai filed charge sheet before the learned 18th Metropolitan Magistrate, Saidapet, Chennai in C.C.No.7538 of 2009, for trial, in respect

of the alleged offence punishable under Section 498-A of IPC. According to the learned counsel for the respondent, based on frivolous and false criminal complaints, the respondent-husband and his family member's image was tarnished and this is nothing short of cruelty. Though it was stated that those proceedings initiated by the appellant-wife are to assert the legal right available to the appellant, the same cannot be accepted, since those complaints are filed only to harass the respondent and his family members.

19. It is also brought to the notice of this Court by the learned counsel for the respondent that the appellant-wife did not allow the respondent-husband to take his own belongings from the leased house. She kept the leased premises under lock and key for months together for which the respondent was made to pay rent. The respondent was therefore compelled to file CrI.O.P.No.16783 of 2009 before this Court. By order dated 18.12.2009, this Court directed the Inspector of Police, E-3, Teynampet Police Station to give Police protection to enable the respondent to remove his belongings on 27.12.2009. While so, the appellant-wife has filed O.S.No.13665 of 2009 before the II Assistant City Civil Court, Chennai and obtained an order of status-quo so as to overcome the order passed by this Court on 18.12.2009 in CrI.O.P.No.16783 of 2009. At this stage, as the leased hold premises was kept by the appellant under her lock and key, the landlord has filed R.C.O.P. No. 513 of 2010 and obtained an order of eviction on 06.12.2010. As against the same, the appellant filed R.C.A. No. 48 of 2011 before the VIII Small Causes Court, Chennai. Ultimately, the appellant vacated the leased premises during the year 2012 and the respondent had also taken his belongings. This, according to the counsel for the respondent, clearly indicates that the appellant has adopted a rigid and unceremonious approach throughout the matrimonial life, not only towards the respondent, but also towards the landlord of the premises who was constrained to approach the Court to take back the possession of the leased premises as it was kept under lock and key by the appellant for months together.

20. The learned counsel for the appellant would contend that criminal trial is pending against the respondent and his family members at the instance of the appellant/de-facto complainant. The respondent and his family are under constant threat of conviction in the criminal case. In such circumstances, no prudent husband would ever think of living with the appellant even for a minute. The marriage between the appellant and the respondent became dead-wood and there is no chance for re-union. Even after the Family Court granted divorce, the appellant has given numerous complaint continuously one way or the other against the respondent and his family members. The appellant and her father also visits the respondent

office and scolded him in the presence of his colleagues, besides they have called the superior officer of the respondent to dismiss the respondent from his employment. This would show that the appellant would go to any extent to falsely implicate the respondent and his family members. The marriage, therefore had irretrievably broken down leaving no scope for re-union. In this context, the learned counsel for the respondent relied on a decision of the Supreme Court in the case of Dastane Vs. Dastane, reported in AIR 1975 SC 1534, wherein in similar situation, it was held by the Apex Court that if the marriage is dead and there is no chance for re-union, it is better to put an end to it. In this case also, the appellant-wife continuously had given one complaint or the other against the respondent-husband, even after the Family Court granted a decree of divorce and thereby the respondent and his family members were subjected to immense hardship and cruelty. In such circumstances, the Family Court is right in granting a decree of divorce. According to the learned counsel for the respondent, such an order passed by the Family Court need not be interfered with. and prayed for dismissal of the appeals.

21. We have heard the counsel for both sides and perused the materials placed on record. Though very many contentions have been raised by the counsel for both sides, we are of the view that the averments made in the Original Petition filed by the respondent herein before the Family Court, seeking dissolution of marriage, will be the foundation for the respondent to succeed in this appeal. Whether the respondent had proved those averments or not, is required to be examined. The allegations made in the Original Petition are mainly on the following lines.

(i) The appellant is not respecting the respondent, insulting him and his family members in front of third parties

(ii) So far five complaints have been lodged by the appellant against the respondent and his family members, which are not only false but frivolous and intended to malign the reputation of the respondent and his family members

(iii) Even during honey-moon, problem started between the couple, during which, the appellant-wife slapped the respondent-husband, for no reason.

(iv) The appellant and the respondent lived for a few months and thereafter living separately for the past 13 years.

(v) The appellant did not allow the respondent to spend money for his parents, even if it is for their medical treatment

(vi) The appellant addressed the respondent as well as his parents in singular in front of relatives and third persons

(vii) After marriage, the appellant made the respondent and his parents as servant to her, forced his parents to prepare food for the respondent, even when the respondent's mother was not well. Thus, the appellant failed to discharge her

matrimonial obligation, she was expected to discharge, as a dutiful wife.

(viii) The marriage between the appellant and the respondent is exhausted and there is no chance for its revival.

(ix) The respondent and his family members are under constant threat of being convicted in the Criminal case launched by the appellant against him and his parents alleging demand of dowry.

(ix) The appellant and her father visited the office of the respondent and scolded him in front of his colleagues, besides required the employer of the respondent to dismiss him from his employment.

22. No doubt, the aforestated allegations made in the Original Petition would only show that the matrimonial life between the appellant and the respondent, was not free from any disturbance. It is also true that the appellant and the respondent lived jointly only for a few months and thereafter, they are residing separately for about thirteen years. At the same time, for grant of a decree of divorce on the ground of cruelty, the averments made in the Original Petition must be sufficiently proved in a manner known to law, with substantial materials.

23. It is true that in order to prove the averments in the Original Petition, the respondent has marked several documentary evidence relating to the complaints given by the appellant against him and his parents, the anticipatory bail petition filed by the respondent and his parents, the intervening petitions filed by the appellant opposing the grant of anticipatory bail, the Rent Control Proceedings filed by the landlord of the leased premises to take back possession, the suit filed by the appellant to prevent the respondent and the landlord from disturbing the possession as also the Criminal Original Petition filed by him seeking police protection to take back his belongings. It is true that these documents do prove that the matrimonial relationship between the appellant and the respondent was by and large not peaceful. At the same time, it has to be observed that the complaints or the proceedings initiated by the appellant cannot be ipso-facto taken to be as an attempt to harass the respondent and his family members. The fact that the appellant approached the Police or sought the intervention of the Court by initiating legal proceedings can be regarded only as an exercise of legal right of the appellant to assert her lawful right under Law and it cannot be construed as an attempt to harass the respondent and his family members. At the same time, we feel that the appellant-wife had entered into a litigation-spreed against the respondent and his family members, which perhaps she could have avoided. Instead, the appellant ought to have sorted out the differences through the

intervention of the elders at the first instance. In the present case, except the fact that a mediation had taken place at the behest of elders at once, there was no proof of the appellant took any assistance of the elders in the family to resolve the matrimonial row between them. Therefore, if at all, divorce could be granted, it can be granted based on the several complaints given by the appellant. However, the complaints pertaining to dowry harassment made against the respondent has been investigated and a charge sheet has also been filed. The Criminal trial is pending before the competent Court for trial.

24. While so, we are not inclined to go into the merits of the complaint given by the appellant and to hold that the complaint is vexatious or per-se false. At this stage, this Court also cannot conclude that the criminal prosecution launched by the appellant against the respondent is per-se vexatious and false and on that ground, dissolve the marriage solemnised between the appellant and the respondent.

25. The learned counsel for the respondent vehemently contended that on 06.05.2008, during mediation among the elders to patch up the matrimonial differences, the father of the appellant and her family members assaulted the respondent. In this context, the respondent had also given a complaint on 07.05.2008 under Ex.P4. However, according to the respondent, the police officials attached to E-3, Teynampet Police Station did not take any action thereof. According to the counsel for the respondent, Ex.P4 would substantiate the averment that the respondent had made in the Original Petition that he was assaulted by the appellant and her family members and therefore, the Family Court is right in granting a decree of divorce.

26. We are unable to accept this submission of the counsel for the respondent. The fact remains that even on 06.05.2008, under Ex.R4, a complaint was given by the appellant complaining demand of dowry by the respondent and his family members. Therefore, the subsequent complaint given by the respondent on 07.05.2008, under Ex.P4 was treated as a counter-blast to the complaint dated 06.05.2008 given by the appellant. In any event, the complaint given by the respondent on 07.05.2008, under Ex.P4 is not a material document to be taken up for consideration by this Court to grant a decree of divorce. The complaint has been given by the appellant only to protect her legal right and therefore, it cannot be said to be a harassment towards the respondent and his parents.

27. The learned counsel for the respondent submitted that, when the respondent and his parents filed anticipatory bail, the same was objected by the appellant by filing an application to intervene and such an application has been filed only with an intention to put them behind the bars.

28. It is no doubt true that the appellant has filed application seeking permission to intervene and to object the grant of anticipatory bail petition to the respondent and his family members. It is to be observed that such filing of an Intervening Petition will not be a determining factor for dissolution of marriage. The fact remains that inspite of such opposition, anticipatory bail was granted to the respondent and his parents and therefore, no significance could be attached to the filing of the Intervening Petition by the appellant.

29. It is well settled that cruelty cannot be defined with exactitude, as has been held by the Supreme Court in the oft-quoted decision in the case *Raj Talreja Vs. Kavita Talreja*, reported in 2017 (4) CTC 208, wherein it was held as follows:-

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

30. On the other hand, the parameters that are required to be fulfilled by the spouses to get a decree of divorce is delineated by a Division Bench of this Court in the case of *V.R. Rajkumaran vs. B.S. Lavanya* reported in 2020 (8) MLJ 170. Useful reference of the said judgment can be made hereunder as follows:-

"5. It is well settled that cruelty or cruel treatment, is not defined precisely in the Hindu Marriage Act or conspicuously by way of judicial pronouncements by the Courts in our country. The definition of "cruelty" has to be inferred from the facts pleaded and evidence adduced by the party. Some of the leading cases in which cruelty was construed as a ground for dissolution of marriage are:

(i) Proof of the husband or wife falsely or maliciously prosecuting the other through the Criminal Courts and thereby harassing the other;

(ii) Proof of refusal to have conjugal relationship, which is a part of the matrimonial obligation.

(iii) Proof of refusal on the part of either spouse to postpone the child birth;

(iv) Proof of either spouse assaulting or causing bleeding injury during the course of the matrimonial life, thereby making the other spouse to live in constant fear;

(v) Proof of either spouse threatening or intimidating the other to commit suicide and to throw the blame on the other, thereby putting and intimidating the other spouse to remain in fear;

(vi) Proof of voluntary desertion by either spouse without any just or sufficient cause, thereby making the other spouse to suffer silently;

(vii) Proof of scolding or abusing either spouse, either in privacy or in front of others, thereby putting the other spouse into shame and degradation.

31. None of the above parameters laid down by the Division Bench of this Court have been made out in the case on hand. As mentioned above, the averments made by the respondent-husband were denied by the appellant-wife. The respondent-husband has failed to discharge the burden of proof cast on him by examining an independence witness. Therefore the Original Petition filed by the respondent for dissolution of marriage cannot be legally sustained and it is liable only to be dismissed.

32. That apart, it is also to be observed that the averments made in the Original Petition were denied by the appellant by filing a counter before the Family Court. On a careful scrutiny of the averments in the Original Petition filed by the respondent and the counter statement of the appellant before the Family Court, it is evident that both of them have levelled allegation and counter-allegations against each other.

33. To prove those allegations, neither the respondent nor the appellant have examined any independent witness. In the absence of examination of any independent witness, the respondent should have atleast elicited some favourable reply during the cross-examination of the appellant to strengthen his case. In this case, we do not find any such favourable reply in the cross-examination of the appellant that would strengthen the case of the respondent. In the absence of any such favourable reply during the cross-examination of the appellant, the respondent could have examined his parents or any one acquainted with the matrimonial rift. In such circumstances, in the absence of any material evidence to arrive at a finding, we are

of the view that the judgment of the Family Court granting a decree of divorce cannot be sustained.

34. It is common knowledge that, normally, in matrimonial matters, the parties to the "lis" will have the tendency to make sweeping allegations against each other. Therefore, it is always not safe to merely rely upon the sole testimony of the parties to arrive at a factual finding on the correctness of those allegations, in the absence of any independent evidence to support the allegations. Though in stricto-senso the provisions of the Indian Evidence Act do not apply to the matrimonial proceedings, however, only if the evidence of the parties seeking divorce inspire the confidence of the judicial conscience of the Court, grant of a decree of divorce can be considered.

35. No doubt, even today, the appellant is continuously giving various complaints against the respondent and his parents one after the other, which are not in good taste. On appreciation of the entire scenario, at the best, we can conclude that the marriage is irretrievably broken down. But, irretrievable break-down of marriage is not a ground for this Court to grant divorce. This was also reiterated by a Division Bench of this Court in an identical case in the Judgment dated 11.08.2018 passed in CMA No. 3294 of 2011 and CMA No. 102 of 2013 (S. Ramila vs. E. Srinivasan), reported in MANU/TN/5390/2018, and the relevant portion of the Judgment can usefully be quoted hereunder:-

"37. It is contended by the learned Senior counsel for the appellant that during the pendency of these appeals, the respondent had contracted a second marriage and was living with another lady thereby he prevented the appellant to resume the matrimonial relationship with him, It is needless to mention that the respondent would have contracted the second marriage during the pendency of these appeals thinking that there is possibility of dismissal of these appeals by reason of the long and separate living of the appellant and the respondent, but unfortunately, we could not consider the mere long and separate living of the appellant and the respondent as a ground for dissolving the marriage solemnised between them Hence, we are constrained to add that the second marriage contracted by the respondent during the pendency of these appeals is at his own risk. In any event, when we have decided the appeals on legal grounds, the factum of second marriage committed by the respondent has no significance to be attached. In this regard, useful reference could be made to the decision of the Honourable Supreme Court in (Savitri

Pandey vs. Prem Chandra Pandey) reported in (2002 (2) SCC 73 wherein it was held that the solemnisation of second marriage during the pendency of the appeal is at the own risk and choice of the appellant and that no person can be permitted to flout the course of justice by his or her overt and covert acts. In fact, in the said Judgment in Savitri Pandey's case, the Honourable Supreme Court referred to the decision rendered in Ms. Jorden Diengdeh vs. S.S. Chopra AIR 1985 SC 935 wherein it was observed as follows:

"It appears to be necessary to introduce irretrievable breakdown of marriage and mutual consent as grounds of divorce in all cases.... There is no point or purpose to be served by the continuance of a marriage which has so completely and signally broken. We suggest that the time has come for the intervention of legislature in these matters to provide for a uniform code of marriage and divorce and to provide by law for a way out of the unhappy situation in which couples like the present have found themselves."

38. Thus, it is evident that even in the year 1985, the Honourable Supreme Court has reiterated the need for suitable amendment to the Marriage or divorce laws by including 'irretrievable breakdown of marriage' as one of the grounds for dissolution of the marriage between the couple. Unfortunately, till this date, necessary legislation has not been passed to include 'irretrievable breakdown of marriage' as one of the grounds for dissolution of the marriage. In the absence of any such legislative intervention, as observed by the Honourable Supreme Court, this Court is not inclined to uphold the decree of divorce granted by the Family Court on the sole ground that the matrimonial relationship between the appellant and the respondent had broken irretrievably, since they are residing separately for the past 25 years and that the respondent had contracted a second marriage during the pendency of these appeals.

36. In this case, as mentioned above, the matrimonial relationship between the appellant and respondent had strained and it has come to an end leaving no scope for revival. The marriage relationship between the appellant and the respondent had severed due to the various litigations emanated and exchanged between the parties towards each other. Even though the matrimonial relationship between the appellant and the respondent had irretrievably broken it is not a ground available for us to dissolve the marriage between the parties besides that the respondent has failed to adequately prove the averments he had made in the Original Petition for dissolution of marriage.

In such circumstances, we are inclined to interfere with the order passed by the Family Court.

37. Accordingly, we set aside the Order dated 11.01.2013 passed in FCOP No. 1747 of 2009 and FCOP No. 3167 of 2011 on the file of Principal Family Court, Chennai. Both the Civil Miscellaneous Appeals are allowed. No costs. Consequently, all the connected miscellaneous petitions are closed. CMP Nos. 6474, 14435 and 15444 of 2018 and CMP No. 18531 of 2019 for reception of additional documents, are also closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The Principal Judge, Family Court, Chennai.
2. The Section Officer, V.R.Section
High Court, Madras

+2 Ccs to Mr.N.S. Sivakumar, Advocate sr 4054 & 4055

+2 Ccs to Mr.S. Nagarajan, Advocate sr 3923.

CMA Nos. 2296 and 2297 of 2013

NMI (CO)
SP(05/02/2021)

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