



C.M.A.No.2743 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on:	Judgment delivered on:
21.07.2022	29.08.2022

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.2743 of 2015

and

M.P.No.1 of 2015

Geetha

.. Appellant

Vs.

Sundaramohan

.. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984, against the order and decree dated 16.03.2015 made in F.C.H.M.O.P.No.1 of 2014 on the file of the Family Court, Dharmapuri. (M.O.P.No.68 of 2007 on the file of the Sub Court, Dharmapuri).

For Appellant : Mr.J.Ramakrishnan

For Respondent : Mr.J.Hariharan
for Mr.V.Nicholas



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JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI, J.)

The appellant / wife is challenging the order and decree of the Family Court, Dharmapuri dated 16.03.2015 made in F.C.H.M.O.P.No.1 of 2014, granting divorce to the respondent / husband by dissolving the marriage conducted between the appellant and respondent on 09.07.1992.

2.The appellant is wife and respondent is husband. Originally the respondent filed M.O.P.No.68 of 2007 on the file of the Sub Court, Dharmapuri for dissolution of the marriage conducted between the respondent and appellant on 09.07.1992 on the ground of cruelty and desertion. Later, the said M.O.P.No.68 of 2007 was transferred to the file of the Family Court, Dharmapuri and re-numbered as F.C.H.M.O.P.No.1 of 2014.

Case of the respondent:

3.According to the respondent, the marriage between the respondent and appellant was conducted as per the Hindu Customs and Rites on 09.07.1992. In the wedlock, a female child by name Soundarya



appellant did not send any reply. Based on these averments, the respondent filed the said F.C.H.M.O.P.No.1 of 2014 for dissolution of marriage on the ground of cruelty and desertion.

Case of the appellant:

4.The appellant filed counter statement denying all the allegations made against her by the respondent. According to the appellant, it is only the respondent who used to come home drunk, abuse and beat the appellant and children. Due to the attitude of the respondent, the appellant admitted the children in the hostel and is educating them. The appellant denied that she is having illicit relationship with one Subramani and stated that the said allegation made by the respondent is imaginary. She further stated that only to damage the image of the appellant, such allegation has been made by the respondent. The appellant also denied that she is living separately from May 2004 and stated that both of them are living in the same house. The appellant is a B.Com degree holder, while the respondent studied only 10th standard. Due to this, the respondent is having inferiority complex. The respondent is having illicit relationship with one Santhi, wife of elder brother of the respondent. At the instigation of the said Santhi, the respondent starting consuming alcohol and assaulted the respondent. Due to the assault by



the respondent, the appellant suffered injuries in her hand and was taking treatment in a Hospital at Bangalore. The respondent used to assault the appellant demanding money to consume alcohol and when appellant refused, he used to take the cash, watch and cellphone without the knowledge of the appellant, sell them and consume alcohol. She also stated that the O.P. filed by the respondent is only on the false allegations and prayed for dismissal of the O.P.

5.Before the Tribunal, the respondent examined himself as P.W.1, his daughter Soundarya as P.W.2 and 13 documents were marked as Exs.P1 to P13. The appellant examined herself as R.W.1 and examined two neighbours as R.W.2 & R.W.3 and no document was filed and marked.

6.The learned Judge considering the pleadings, framed necessary point for consideration. Considering the pleadings, oral and documentary evidence and point for consideration, the learned Judge held that the respondent proved cruelty and desertion and he is entitled for the relief as claimed for and allowed the F.C.H.M.O.P.No.1 of 2014 granting divorce to the respondent.



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7. Against the said order dated 16.03.2015 made in F.C.H.M.O.P.No.1 of 2014, the appellant has come out with the present appeal.

8. The learned counsel appearing for the appellant contended that the respondent failed to prove the allegation of cruelty and desertion as required by law. The respondent has not let in any evidence to prove the allegations mentioned in the petition. The evidence of the respondent as P.W.1 is not acceptable as the same is not supported by any independent evidence. The learned Judge misconstrued the evidence of P.W.1 & P.W.2, which led to serious miscarriage of justice. The learned Judge ought not to have accepted the evidence of P.W.2 in view of her young age and that she is under the control of the respondent and she could have deposed under duress and coercion of the respondent. The evidence of P.W.1 & P.W.2 or Exs.P2 to P13 have not proved the claim of the respondent with regard to cruelty and desertion made by the appellant in the petition. The respondent has not made out any case as required under Section 13 (1) (ia) & (ib) of the Hindu Marriage Act, 1955 for dissolution of marriage. The appellant has placed materials to show that it was the respondent who treated the appellant with cruelty. The complaints made



by the appellant is based on the true facts with regard to cruelty meted out by the respondent and the learned Judge erroneously gave an adverse finding with regard to the complaint given by the appellant. In any event, the said complaint will not amount to causing cruelty to the respondent.

8(i). The learned counsel appearing for the appellant further contended that the appellant has given complaint to protect herself from the respondent and his family members, as they were torturing her demanding dowry. The respondent failed to prove that the appellant voluntarily left the matrimonial home with an intention to break the matrimonial tie. In support of his contention, the learned counsel relied on the following judgments and prayed for allowing the appeal:

8(i) (a). **(2002) 1 SCC 308, [Adhyatma Bhattar Alwar Vs. Adhyatma Bhattar Sri Devi]**, wherein the Hon'ble Apex Court at paragraph No.7 has held as follows:

“ 7." Desertion" in the context of matrimonial law represents a legal conception. It is difficult to give a comprehensive definition of the term. The essential



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ingredients of this offence in order that it may furnish a ground for relief are :

- 1.the factum of separation;*
- 2.the intention to bring cohabitation permanently to an end - animus deserendi;*
- 3.the element of permanence which is a prime condition requires that both these essential ingredients should continue during the entire statutory period;*

The clause lays down the rule that desertion to amount to a matrimonial offence must be for a continuous period of not less than two years immediately preceding the presentation of the petition. This clause has to be read with the Explanation. The Explanation has widened the definition of desertion to include "wilful neglect" of the petitioning spouse by the respondent. It states that to amount to a matrimonial offence desertion must be without reasonable cause and without the consent or against the wish of the petitioner. From the Explanation it is abundantly clear that the legislature intended to give to the expression a wide import which includes wilful neglect of the petitioner by the other party to the marriage. Therefore, for the offence of desertion, so far as the deserting spouse is concerned, two essential conditions must be there, namely, (1) the factum of separation, and (2) the intention to bring cohabitation permanently to an end (animus deserendi). Similarly, two elements



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are essential so far as the deserted spouse is concerned : (1) the absence of consent, and (2) absence of conduct giving reasonable cause to the spouse leaving the matrimonial home to form the necessary intention aforesaid. The petition for divorce bears the burden of proving those elements in the two spouses respectively and their continuance throughout the statutory period.”

8(i) (b). (2019) 8 SCC 308, [Ravinder Kaur vs. Manjeet Singh (dead) through legal representatives], wherein the Hon'ble Apex Court at paragraph Nos.10 to 14, has held as follows:

“ 10. In a proceeding of the present nature when the respondent herein was contending that the allegations of illegitimate relationship being made against him had amounted to mental cruelty and in a situation where the existence of Smt. Nirmaljit Kaur was not a fiction but there were two versions to the nature of relationship, the same cannot be weighed in the same scale when the allegations against the appellantwife was made by the respondent about a nonexistent person. If the respondenthusband is to contend that the allegations of illegitimate relations made against him has amounted to mental cruelty, in fact as rightly observed by the trial court, the bald allegations made by the respondent against the



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appellantwife would also amount to the same. If that be the position insofar as the allegations to that effect, the trial court had in fact referred to the evidence in detail and has arrived at the conclusion that the ground of mental cruelty in that regard so as to dissolve the marriage cannot be accepted.

11. Insofar as the action taken by the appellant herein to file a police complaint and the proceedings initiated under [Section 107/151](#) of Cr.PC it is the natural legal course adopted by respondent to protect her right and possession of the property. It is not in dispute that at the point when a complaint was filed and a suit was also stated to have been filed by the appellant herein on 05.09.1995 there was misunderstanding brewing in the marital life of the parties and in that circumstance the appellant herein had adopted the legal course to protect her rights. Such action taken in accordance with law cannot, in any event, be considered as inflicting cruelty as the legal proceedings was used only as a shield against the assault. In this regard the decision of this Court in the case of [Ramchander vs. Ananta](#) (2015) 11 SCC 539 relied on by the learned counsel for the appellant would be relevant, wherein while taking note of similar instances this Court has held that the same would not amount to cruelty and such instances would not be convincing enough to lead to a conclusion that the marriage is irretrievably broken down.



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12. In the above background, keeping in view the nature of allegations made and the evidence tendered in that regard, we find that the consideration made by the trial court with reference to the reliability of the evidence is more appropriate. As already noticed the High Court, while taking note of the nature of allegations made has proceeded on the basis that there is irretrievable breakdown of the marriage. Needless to mention that irretrievable breakdown of marriage by itself is not a ground provided under the statute for seeking dissolution of marriage. To this effect it would be apposite to refer to the decision rendered by this Court to that effect in the case of *Vishnu Dutt Sharma vs. Manju Sharma* (2009) 6 SCC 379 relied upon by the learned counsel for the appellant. No doubt on taking note of the entire material and evidence available on record, in appropriate cases the courts may have to bring to an end, the marriage so as not to prolong the agony of the parties. However, in the present facts, at this point in time even that situation does not arise in view of the changed scenario on the death of the respondent herein.

13. As already taken note, the marriage between the parties had taken place in the year 1970 and the undisputed fact is also that the children of the parties are grown up and the very incidents referred to by the appellant regarding the illegitimate relationship were from the point of time when the respondent was posted at Manipur and the appellant herein had shifted there



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in the year 1991. By such time the marital bond was quite mature and with regard to certain incidents where there were allegations it can only be considered as a misunderstanding between the parties which only required a minor adjustment to reassure each other and iron out the crease. Hence, merely because certain issues have been raised with regard to the same, even if it be on a misunderstanding in the instant facts, it cannot be considered as inflicting mental cruelty in the nature it is required for considering the petition under [Section 13](#) of the Hindu Marriage Act for dissolving the marriage. Though the learned counsel representing the respondents referred to the incidents by which the appellant had hurled false allegations against the respondent, presently when the respondent has died and in a circumstance where one of the legal representatives, namely Shri Iqbbal Singh was examined as RW6 in support of the case of the appellant herein and the legal representatives No.1 and 3, though were majors had not been examined in the proceedings, any contention raised on their behalf would not be of any assistance to take any other view. Therefore, if all these aspects are kept in perspective, we are of the view that the High Court was not justified in reversing the wellconsidered judgment passed by the trial court.

14. Accordingly, the judgment dated 23.08.2006 passed in F.A.O. No.101M/1999 is set aside and the judgment dated 08.04.1999 passed in H.M.A. File



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No.133 of 16.12.1995 by the Additional District Judge, Bathinda is restored. The instant appeal is allowed with no order as to costs. All pending applications also stand disposed of.”

9. The learned counsel appearing for the respondent reiterated the averments made in the petition and referred to the evidence of P.W.1, P.W.2, Exs.P2 to P13 and contended that the respondent has, by both oral and documentary evidence, proved the cruelty meted out to him by the appellant and that appellant has voluntarily left the matrimonial home in May 2004 and she is living separately in another portion of same house and subsequently left from that portion also. The appellant has refused to perform her marital obligation for the reason best known to her and thereby broke the marriage irretrievably. The learned Judge has properly considered the pleadings, oral and documentary evidence and allowed the F.C.H.M.O.P.No.1 of 2014 filed by the respondent. The learned counsel appearing for the respondent further contended that the appellant gave a criminal complaint against the respondent and the family members falsely alleging that they tortured her by demanding dowry. F.I.R. was registered and charge sheet was filed against the respondent and others. After full fledged trial, the learned Judicial Magistrate No.I, Dharmapuri, acquitted the respondent and others,



holding that the complaint given by the appellant is vexatious. Giving false complaint and making the respondent and others to undergo a criminal trial which resulted in acquittal amounts to cruelty to the respondent. The learned counsel appearing for the respondent further submitted that the criminal prosecution initiated against the respondent, his mother, his brother and brother's wife amounts to harassment and cruelty.

9.1. In support of his contention, the learned counsel relied on the following judgments:

(i) **2019 (3) CTC 890, [Meenakshi Vs. Premkumar Nachiappan]**, wherein the Division Bench of this Court at paragraph No.35 has held as follows:

“ 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,



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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.”

(ii) 2019 (6) CTC 587, [Rani Narasimha Sastry Vs. Rani Suneela



Rani], wherein the Hon'ble Apex Court at paragraph Nos.13 & 14, has held as follows:

“ 13.In the present case the prosecution is launched by the respondent against the appellant under [Section 498-A](#) of IPC making serious allegations in which the appellant had to undergo trial which ultimately resulted in his acquittal. In the prosecution under [Section 498-A](#) of IPC not only acquittal has been recorded but observations have been made that allegations of serious nature are levelled against each other. The case set up by the appellant seeking decree of divorce on the ground of cruelty has been established. With regard to proceeding initiated by respondent under [Section 498-A](#) of IPC, the High Court made following observation in paragraph 14:

14.....Merely because the respondent has sought for maintenance or has filed a complaint against the petitioner for the offence punishable under [Section 498-A](#) of IPC, they cannot be said to be valid grounds for holding that such a recourse adopted by the respondent amounts to cruelty."

14.The above observation of the High Court cannot be approved. It is true that it is open for anyone to file complaint or lodge prosecution for redressal for his or her grievances and lodge a first information report for an offence also and mere lodging of complaint or FIR cannot ipso facto be treated as cruelty. But when a person undergoes a trial in which he is acquitted of the allegation of offence under [Section 498-A](#) of IPC, levelled by the wife against the husband, it cannot be accepted that no cruelty has meted on the husband. As per



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pleadings before us, after parties having been married on 14.08.2005, they lived together only 18 months and thereafter they are separately living for more than a decade now.”

(iii) 2021 (1) CTC 129, [Vivek Thambuswamy Vs. Maria @ Sijo

Paul], wherein the Division Bench of this Court at paragraph No.34 has held as follows:

“ 34. Even though the appellant-husband did not prove the averments contained in the Original Petition that he was subjected to matrimonial cruelty by examining independent witness, the subsequent criminal proceedings initiated by the respondent-wife against the appellant-husband and his parents, definitely widens the matrimonial relationship between the parties. As observed above, the respondent, without any justifiable cause or reason, had implicated the parents of the appellant in the criminal proceedings alleging that they have demanded dowry. However, such an averment is conspicuously absent in the counter statement filed in the Original Petition filed before the Family Court. To make it clear, in the counter statement filed by the respondent-wife on 08.01.2014, there is no averment made as against the parents of the appellant-husband. If really the respondent-wife was subjected to any matrimonial cruelty or harassment at the instance of the parents of the appellant-husband, she could have spelt out the same at the time of filing the counter statement. Therefore, we conclude that the criminal proceedings initiated by the respondent-wife as against the



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parents of the appellant-husband, are clearly an after-thought. When such an action has been resorted to by the respondent to prosecute the parents of the appellant, it only enlarges the differences between the couple. In such circumstances, no prudent husband would ever be inclined to live with the wife, when his parents are prosecuted without any justifiable reason. This attitude of the respondent-wife in preferring criminal complaint against the appellant-husband and his parents, definitely amounts to cruelty and on that ground, the appellant-husband is entitled to a decree of divorce. The respondent-wife, by her own conduct, had enlarged the scope of the matrimonial litigation and thereby subjected the appellant-husband to cruel treatment. We also take note of the fact that nowhere, the respondent had expressed any inclination to live with the appellant, rather, she only repeatedly harped upon the usurp of her wealth by the appellant and his parents. In such view of the matter, we feel that interest of justice will only require grant of a decree of divorce as prayed for by the appellant-husband. In this context, we derive strength from a decision of the Supreme Court in the case of 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



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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...”

10. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the respondent and perused the entire materials on record.

Point for consideration arising in this appeal is whether respondent is entitled to dissolution of marriage on the ground of cruelty and desertion?

11. From the materials on record, it is seen that the respondent and appellant got married on 09.07.1992 according to Hindu Customs and Rites. According to respondent, from the beginning, their matrimonial life was not cordial. The appellant was doing money lending business in spite of the respondent opposing the same. Due to the said money lending business, the appellant was quarrelling with number of persons. When the respondent asked the appellant to stop the money lending business, she abused the respondent in filthy language. The appellant did



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not care for the respondent and minor children and used to abuse the respondent and minor children and also assault them. The appellant did not care for the respondent and was not discharging her duty as a wife. Only the respondent was taking care of the children and prepare food for them, making them ready to go to school. From May 2004, the appellant deserted the respondent and children and started living in another portion of the same house having separate kitchen. The appellant intentionally and without any reasonable cause, deserted the respondent and has withdrawn the conjugal bliss to the respondent. The appellant started having illicit relationship with one Subramani. When the respondent confronted the same with appellant, she gave a false complaint against the respondent, his mother, his brother and brother's wife stating that they tortured the appellant demanding dowry. Based on the said complaint, charge sheet was filed against the respondent and his family members. After full fledged trial, the respondent and others were acquitted by the judgment dated 12.11.2018. The learned Judicial Magistrate No.I, Dharmपुरi held that complaint given by the appellant was vexatious. On these averments, the respondent sought for dissolution of marriage.

12.The appellant denied all the allegations made by the respondent. According to the appellant, she never left the matrimonial



home or refused the conjugal right to the respondent. Both appellant and respondent are residing in the same house. The appellant has stated that the respondent is having illicit relationship with his elder brother's wife Santhi. Only on her instigation, the respondent used to consume alcohol, abuse the appellant and assault her and children. Only because of the respondent and his family members demanding dowry, the appellant gave a complaint against them. The appellant did not desert the respondent and did not treat the respondent cruelly. It is only the respondent and his family members treated the appellant cruelly. On these averments, the appellant sought for dismissal of F.C.H.M.O.P.No.1 of 2014.

13.Before the Tribunal, the respondent examined himself as P.W.1 and deposed as that of the averments in the petition. In addition to that, the respondent marked the complaint given by the appellant as Ex.P7, in which the appellant alleged demand of dowry by the respondent, his mother, his brother and brother's wife. Based on the said complaint, a criminal case was registered against the respondent and his family members and trial was conducted by the competent Magistrate. After full fledged trial, the learned Judicial Magistrate No.I, Dharmapuri, acquitted the respondent and his family members. The respondent has marked the said judgment as Ex.P11. The respondent and his family members were



acquitted on merits and not on benefit of doubt. The learned Judicial Magistrate No.I, Dharmapuri in Ex.P11 has given a finding that the complaint given by the appellant is vexatious. When a false complaint is given by the wife against her husband, whether it will amount to cruelty was considered by the Hon'ble Apex Court in the judgment reported in **2019 (6) CTC 587** and the two Division Bench judgments of this Court reported in **2019 (3) CTC 890** and **2021 (1) CTC 129**, referred to above and held that it will amount to mental cruelty.

13(i). In all the above three judgments, it has been held that a false complaint given by the wife against her husband amounts to cruelty. These judgments relied on by the learned counsel appearing for the respondent and the relevant portions are extracted above. The ratio in all the three judgments are squarely applicable to the facts of the present case.

13(ii). In addition to examining the respondent himself as P.W.1, he also examined his daughter as P.W.2. P.W.2 was aged 19 years and she was studying II year B.A. English Literature at Vellalar Womens College, Erode at the time of examination. She has categorically deposed



that from her childhood, the appellant was assaulting P.W.2, her brother as well as the respondent cruelly. She also stated that she has seen the appellant assaulting the respondent. When a suggestion was put to her that the respondent assaulted the appellant and broke the hand of the appellant, she has deposed that she did not see such an incident. She also deposed that the complaint given by the appellant is false one and due to that, the respondent was arrested. P.W.2 also denied the suggestion that appellant only took care of her and her younger brother. The learned Judge, who had an opportunity to observe P.W.2, who deposed in the witness box, has held that P.W.2 has shown maturity and accepted the evidence of P.W.2. The contention of the learned counsel appearing for the appellant that the evidence of P.W.2 must be eschewed due to her age and that she could have deposed due to influence of the respondent is without merits in view of the finding of the learned Judge.

13(iii). P.W.2 also deposed that the appellant did not take care of them, living separately from May 2004 onwards and P.W.2 and her brother, son of the appellant and respondent are residing only with the respondent. P.W.2 further deposed that during enquiry by the Police, her brother expressed his desire to stay only with father. Based on the said statement of the son of the appellant and respondent, the Police advised



the appellant not to force the children to live with her. The son of the appellant and respondent was admitted in the very same school, where P.W.2 was studying. Both P.W.2 / daughter and son were admitted in hostel and continued their studies. The respondent produced documents to show that he is only maintaining the children and got visiting rights in the hostel. The appellant has made contradictory statement with regard to fees paid for the education of the children. At one place, she has stated that only she is taking care of the education of the children and in another place she stated that from the pension received by her mother-in-law, the respondent is paying the school fees. In fact, P.W.2 being a meritorious student, her school education expenses was met by the school authorities and her college fees was paid by the Tamil Nadu Educational Trust.

14. The appellant examined herself as R.W.1 and deposed as that of the averments in the counter statement. In the counter statement as well as proof affidavit, the appellant did not mention anything about the complaint given by her or her brother, either with regard to demand of dowry or assault by the respondent. In the cross examination, firstly she deposed that she did not remember having given any complaint, immediately she has stated that she has not given any complaint. She deposed that her brother gave complaint with regard to assault by the



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respondent. The said deposition is contrary to Ex.P7/complaint. A reading of Ex.P7 reveals that the appellant has given complaint alleging demand of dowry by the respondent, his mother, his elder brother and elder brother's wife Santhi. In the criminal case initiated based on the said complaint, the appellant admitted that she and her brother gave evidence. The judgment delivered in the criminal case was marked as Ex.P11. By the said judgment, the learned Judge rejected the contention of the appellant as vexatious and acquitted the respondent and his family members. The prosecution or the appellant had not filed any appeal against the said judgment and the said judgment has become final. As per the said judgment, it is evident that the appellant had given a false complaint of demanding dowry not only against the respondent, but also against his mother, elder brother and elder brother's wife Santhi. Giving a false complaint against the other spouse and subjecting for criminal trial amounts to cruelty. It has been consistently held that when a false complaint is given by one of the spouses amounts to mental cruelty. The ratios in the three judgments relied on by the learned counsel appearing for the respondent are squarely applicable to the facts of the present case.

14(i). The appellant also examined R.W.2 & R.W.3, her neighbours. They deposed that it is the respondent who treated the



appellant with cruelty, namely abusing and assaulting the appellant after consuming alcohol. They also denied that appellant is having illicit relationship with one Subramani. The evidence of R.W.2 & R.W.3 is full of contradiction and artificial in nature. Therefore, the evidence of R.W.2 & R.W.3 are not acceptable.

15.Considering the above materials, various averments made by the respondent and appellant, evidence of P.W.1, P.W.2, R.W.1 to R.W.3 and especially Exs.P8 & P11 and ratio in the three judgments relied on by the learned counsel appearing for the respondent, we are of the opinion that the respondent has proved the cruelty meted out by him by the appellant and hence, the respondent is entitled to the relief of dissolution of marriage. There is no reason to interfere with the said finding of the learned Judge.

Desertion:

16.The respondent sought dissolution of marriage conducted between him and appellant on 09.07.1992 on the ground of cruelty as well as desertion. As per Section 13(1) (ib) of the Hindu Marriage Act, 1955, desertion by husband or wife deserting the other spouse for not



less than two years preceding the presentation of petition is a ground for dissolution of marriage.

Section 13 (1) (ib) of the Hindu Marriage Act, 1955 reads as follows:

“Hindu Marriage Act, 1955:

13. Divorce:

13 (1) (ib) has deserted the petitioner for a continuous period of not less than two years immediately preceding the presentation of the petition”

16(i). The respondent has stated in the petition that from May 2004, the appellant deserted the respondent and started living in another portion of the same house and was having separate kitchen and subsequently she left that portion also. To substantiate the same, the respondent examined himself as P.W.1 and his daughter as P.W.2. Both P.W.1 & P.W.2 deposed that the appellant left the matrimonial home from May 2004. They withstood the cross examination. In addition to oral evidence, the respondent produced the family card (ration card) and marked the same as Ex.P10. In the said family card (ration card), the appellant name is not found. Only the respondent and two children were



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shown as living in the said address. The appellant denied the allegation that she was living separately from May 2004. The appellant has deposed that she is living only in the matrimonial home and having conjugal relationship with the respondent. But she admitted that her name is not in the family card (ration card) and gave an explanation that only the respondent is using the said card and she deposed that she does not know why her name is not found in the family card (ration card). Further P.W.2, daughter of the appellant and respondent categorically deposed that the appellant is not residing in the matrimonial home with the respondent. She withstood the cross examination. There is no reason to disbelieve the evidence of P.W.2. There is no need for P.W.2 to depose falsely against her mother.

17. In addition to the above, there are two reasons to hold that the appellant is not residing along with the respondent in the matrimonial home.

17(i). The respondent issued Ex.P2 / notice to the appellant making serious allegations against the appellant, who did not send any reply after receiving the said notice. If really serious false allegations are made, any prudent and responsible person would react by sending a reply



by setting out the correct facts denying the false allegations.

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17(ii). The appellant in her proof affidavit gave her address as though she was residing in the matrimonial house, while she was not residing there. The appellant in her cross examination admitted that she was residing in a house at V.Jettihalli, which is ¼ km from the matrimonial home. She admitted that the said house belongs to one Madhesh of Bangalore and she has taken the said house for lease and she is living in the said house for the past one year. She has not produced the lease deed or any other document to prove that she is living there only for the past one year. The appellant has not approached the Court with clean hands. The appellant also examined R.W.2 & R.W.3 to prove the cruelty by the respondent and also that she was living with the respondent. The evidence of R.W.2 & R.W.3 are full of contradiction. In any event, R.W.2 had admitted in cross examination that appellant was residing separately for the past seven years when she gave the evidence.

17(iii). The learned counsel appearing for the appellant contended that the respondent failed to allege and prove that the appellant voluntarily and without any reasonable cause, left the matrimonial home.

The said contention is not acceptable in view of the stand taken by the



appellant herself. It is the case of the appellant that she did not leave the matrimonial home and she is residing along with the respondent. In the cross examination, she admitted that she is residing in a house at V.Jettihalli, which belongs to one Madhesh of Bangalore. She has not explained as to why she left the matrimonial home. It is not the case of the appellant that she is living separately due to cruelty of the respondent and his family members. On the failure of the appellant explaining the reasons for living separately, it is clear that she has left the matrimonial home voluntarily and without any reason.

17(iv). Considering the above materials, especially Exs.P2 & P10, we hold that the respondent proved that appellant deserted him from May 2004 without any valid reason. In view of the above materials, the judgments relied on by the learned counsel appearing for the appellant are not applicable to the facts of the present case.

18.The respondent proved the cruelty as well as desertion of the appellant. The point for consideration is answered in favour of the respondent.



C.M.A.No.2743 of 2015

19. For the above reasons, this Civil Miscellaneous Appeal is liable

to be dismissed and it is hereby dismissed. Consequently, the connected

Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.S., J)
29.08.2022

krk

Index : Yes / No

Internet : Yes / No

To

1. The Judge,
Family Court,
Dharmapuri.

2. The Section Officer,
VR Section,
High Court,
Madras.



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C.M.A.No.2743 of 2015

V.M.VELUMANI, J.
and

S.SOUNTHAR, J.

krk

Pre-delivery Judgment in
C.M.A.No.2743 of 2015

29.08.2022



C.M.A.No.2743 of 2015

C.M.A.No.2743 of 2015
and
M.P.No.1 of 2015

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V.M.VELUMANI, J.
and
S.SOUNTHAR, J.

(Order of the Court was delivered by V.M.VELUMANI,J.)

Today, this appeal is listed under the caption 'For being spoken to'.

2.It is brought to the notice of this Court that in the conclusion portion of the judgment of this Court dated 29.08.2022, there is no mention about the order passed in F.C.H.M.O.P.No.1 of 2014.

3.In view of the above, paragraph No.19 of the judgment of this Court dated 29.08.2022 reads as follows:

“19.For the above reasons, this Civil Miscellaneous Appeal is liable to be dismissed and it is hereby dismissed.
The order and decree dated 16.03.2015 made in F.C.H.M.O.P.No.1 of 2014 on the file of Family Court, Dharmapuri stands confirmed. Consequently, the connected Miscellaneous Petition is closed. No costs.”



C.M.A.No.2743 of 2015

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4.Registry is directed to issue order copy after carrying out the above corrections. The other contents of the judgment of this Court dated 29.08.2022 shall remain unaltered.

(V.M.V., J) (S.S., J)

04.01.2023

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C.M.A.No.2743 of 2015

V.M.VELUMANI, J.
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