



C.M.A.No.2305 of 2016

and

C.M.P.No.16257 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**

and

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

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and

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Kalaivani

...Appellant

Vs.

S.Durai

... Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1984 against the Decree and Judgment dated 08.03.2016 in F.C.O.P.No.264 of 2010 on the file Family Court Salem.

For Appellant : Mr.T.L.Thirumalaisamy

For Respondent : Mr. V.Sekar



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J U D G M E N T

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

This Appeal has been filed by the wife challenging the Decree of divorce granted in favour of the husband in F.C.O.P.No.264 of 2010 dated 08.03.2016 by the Family Court, Salem.

2.The respondent filed the Petition for Divorce under Section 13(1) (i-a) of the Hindu Marriage Act on the ground of cruelty in F.C.O.P.No.264 of 2010. The allegations in the Petition for Divorce briefly are:

(a) On 06.07.1992, the respondent married the appellant at Salem and two sons by name Rajeswaran and Narendran were born in the wedlock.

(b) The respondent was running a concern by name Sri Murugan Agencies.He was doing well in the business and purchased two plots in his name. At the request of his Father-in-Law, he started another concern by name Kalaivani Enterprises to help his Brother-in-Law viz.Mathivanan to do business. He had purchased a Maruti Car and allowed his Brother-in-Law to use the same. During the course of the business, he found out that his Brother-in-Law had



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misappropriated Rs.8,50,000/- (Rupees Eight Lakhs Fifty Thousand only) from his two concerns with the help of the appellant herein. The respondent therefore relieved Mathivanan from the business. Since then, the appellant started picking up frequent quarrels with the respondent.

c)The appellant informed the respondent that she was going to act in Tele Films, often went out without his permission and came late in the evening without caring for either the respondent or the children.

(d) The father of the appellant herein borrowed money from the Respondent on several occasions. When the respondent demanded return of the same, further disputes arose between the respondent and the appellant.

(e)While so, on 30.01.2008, the appellant, her brother and father assaulted the respondent. Thereafter, the appellant started to live in her parental home. While leaving the home, she took away all the jewels.

(f)In order to reconcile and considering the welfare of the minor children, the respondent went to the appellant's parents house to bring her back. However, the appellant never heeded to his request. Thereafter, the respondent came to know that the appellant was having illegal intimacy with a person living near her parents'



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house.

(g) Thereafter, the appellant issued a legal notice on 15.05.2008 making false allegations against the respondent, that he was a drunkard and he demanded dowry. That apart, the appellant herein filed M.C.No.51 of 2008 on the file of Family Court Salem as against the petitioner making false allegations and prayed for maintenance.

(h) Even after all these incidents, the respondent was willing to continue the matrimonial life for the sake of his children and hence he filed H.M.O.P.No.25 of 2009 for restitution of conjugal rights. While the said case was pending, the appellant, her brother, father Mr.Sundaram along with some third persons claiming to be Human Rights Activists trespassed into the respondent's house and armed with deadly weapons like knife and wooden logs. They damaged the house doors, electric meter box, telephone and other articles in the house and attempted to assault the respondent. The respondent had lodged a complaint before Kannankurichi Police Station on 16.05.2009 and a C.S.R was issued. Thereafter, the respondent filed the petition for divorce on the ground of cruelty.



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3.The case of the appellant:-

(a). The Appellant filed counter statement denying all the allegations made in the petition. She stated that the respondent never treated the appellant and her children with love and affection. He always came home late in an inebriated condition. He woke up late in the morning and would immediately leave for his job. He always abused the appellant with unparliamentary words and caused cruelty both mentally and physically to her. The respondent never supported her family or paid money to her father or brother. On the other hand, he demanded money from her father. He chased the appellant and the children from the house.

(b)The Respondent initially filed H.M.O.P.No.25 of 2009 for restitution of conjugal rights and by the memo dated 29.05.2009, withdrew the same. He had illegal intimacy with another lady. The respondent was a spendthrift and the appellant's brother herein Mr.Mathivanan acted responsibly in managing the business transactions. On 15.05.2009 it was the respondent, who brought henchmen and beat up the appellant and chased her out of the matrimonial home. The respondent had alleged falsely as if the appellant along with her henchman assaulted and caused harm to the appellant.



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4.Before the trial Court, the respondent examined two witnesses on his side as P.W.1 and P.W.2 and marked two documents Ex.P.1 and Ex.P.2. The Appellant examined two witnesses on her side as R.W.1 and R.W.2 and marked Ex.R.1.

5.The learned trial Judge on the basis of pleadings, oral and documentary evidence held that the respondent had established the allegations of cruelty and passed the decree of divorce in favour of the respondent.

6.The learned counsel for the appellant submitted that the respondent had falsely stated that he was assaulted by the appellant and her henchman on 15.05.2009. The learned trial judge erroneously relied upon the Xerox copy of the C.S.R marked by the respondent. The learned counsel further submitted that the respondent filed the petition for restitution of conjugal rights in the year 2009, only after the appellant filed maintenance case in M.C.No. 51 of 2008, to avoid payment of maintenance to her and the two children. It was the respondent who



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attacked the appellant on 15.05.2009 and chased her away from the matrimonial home. Therefore, the allegation as regards cruelty is unsubstantiated and the decree ought not to have been passed.

7. The learned counsel for the respondent on the other hand submitted that the appellant and the respondent have been living separately since January 2008. The learned Judge after considering the oral and documentary evidence rightly concluded that the respondent is entitled to decree of divorce on the ground of cruelty.

8. Heard Mr.T.L.Thirumalaisamy, the learned counsel for the appellant and Mr.V.Sekar, learned counsel for the respondent.

9. The point for consideration is whether in the given facts and circumstances, the trial Court was justified in passing a decree of divorce on the petition filed by the respondent/husband.



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10. We have given our anxious consideration to the pleadings, evidence on record and the submissions of the learned counsels on either side. We find that the respondent had made several allegations against the appellant. The respondent has also alleged that the appellant was having illegal intimacy with another person. Similarly, the respondent has also made an allegation that the appellant was having illegal intimacy with a lady. However, we find apart from their oral evidence, there is no evidence to corroborate and establish these facts. Similarly, the allegation of the respondent that the appellant's brother misappropriated a sum of Rs.8,50,000/- (Rupees Eight Lakhs Fifty Thousand only) from his business concerns are statements found in the oral evidence . The respondent has not filed any document to prove the case of misappropriation against the appellant's brother. In any case, even assuming that the appellant's brother misappropriated Rs.8,50,000/- (Rupees Eight Lakhs Fifty Thousand only) from the business concerns of the respondent, the appellant cannot be guilty of cruelty.

11. If the allegations of misappropriation by the appellant's brother are true then, it is likely that the appellant and the respondent would have had



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misunderstanding. However, it has to be considered whether there was actually any misunderstanding between the appellant and the respondent on account of the above fact or for any other reason.

12.On perusal of the evidence, we find that the appellant had filed a maintenance case as early as in the year 2008 in M.C.No.51 of 2008. This would suggest that the disputes arose between the parties even as early as in the year 2008, if not earlier. During the pendency of the maintenance petition the respondent had filed F.C.O.P.No.25 of 2009 for restitution and conjugal rights. While so, it is the case of the respondent that on 15.05.2009 at about 4.30 p.m, the appellant along with her brother, her father and few other henchmen claiming to be members of Human Rights Organization trespassed into his house and damaged the doors, electric meter box, telephone etc., in the house and attempted to assault him with deadly weapons. The respondent escaped from the appellant and her henchmen. The respondent thereafter lodged a complaint before the Kannakurichi Police Station. The Kannankurichi Police had given C.S.R acknowledging the receipt of complaint Ex.P.3 lodged by the respondent. The copy of the complaint



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has been marked as Ex.P.2. In the said complaint, the respondent has alleged that the appellant, her brother, her father along with few people belonging to the Human Rights members damaged the doors, electric meter box, telephone etc., and attempted to attack him. The appellant though has denied the allegations made by the respondent and claimed that it was the respondent who assaulted her, had not produced any evidence to substantiate the same. In fact, the respondent after the incident on 15.05.2009 withdrew the petition for restitution for conjugal rights and filed the petition for divorce. We may also note that the respondent had not filed the petition for divorce immediately but had waited till April 2010 to file the petition for divorce.

13.The above narration discloses the following facts.

- (a) There was a misunderstanding between the appellant and the respondent from 2007. The petition for maintenance was filed by the appellant and the petition for restitution for conjugal rights was filed by the respondent.
- (b) The appellant and the respondent had been trading allegations of adultery as against each other, though, it has not been conclusively proved.



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(c) The respondent had alleged that the misunderstanding started after the appellant's brother misappropriated money from the business concerns. The respondent had filed a complaint against the appellant, her brother, father, and few other persons who trespassed and damaged his household properties and attempted to assault.

(d) Admittedly the petitioner and the respondent are living separately for nearly fifteen years.

14. The law relating to the grant of decree of divorce on the ground of cruelty has been summed up by the Hon'ble Apex Court in the case of **Jayachandran vs. Aneel Kaur** reported in **(2005) 2 SCC 22**. The relevant portions are extracted hereunder:

10. The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger. The question of mental cruelty has to be



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considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of the spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In a delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental



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cruelty there may not at the same time be direct evidence.

In cases where there is no direct evidence, courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

11. The expression “cruelty” has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct



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complained of itself is bad enough and per se unlawful or illegal. Then the impact or injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. (See Shobha Rani v. Madhukar Reddi [(1988) 1 SCC 105 : 1988 SCC (Cri) 60 : AIR 1988 SC 121] .)

12. To constitute cruelty, the conduct complained of should be “grave and weighty” so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than “ordinary wear and tear of married life”. The conduct, taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, as noted above, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It is difficult to lay down a precise definition or to give exhaustive description of the circumstances, which would constitute cruelty. It must be of the type as to satisfy



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the conscience of the court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. Physical violence is not absolutely essential to constitute cruelty and a consistent course of conduct inflicting immeasurable mental agony and torture may well constitute cruelty within the meaning of Section 10 of the Act. Mental cruelty may consist of verbal abuses and insults by using filthy and abusive language leading to constant disturbance of mental peace of the other party.

13. The court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would



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tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. Mere trivial irritations, quarrels between spouses, which happen in day-to-day married life, may also not amount to cruelty. Cruelty in matrimonial life may be of unfounded variety, which can be subtle or brutal. It may be words, gestures or by mere silence, violent or non-violent.

14. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hypersensitive approach would be counterproductive to the institution of marriage. The courts do not have to deal with ideal husbands and ideal



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wives. *It has to deal with a particular man and woman before it. The ideal couple or a mere ideal one will probably have no occasion to go to Matrimonial Court. [See N.G. Dastane (Dr.) v. S. Dastane [(1975) 2 SCC 326 : AIR 1975 SC 1534]]*

15.Further in ***Vinita Saxena vs. Pankaj Pandi*** reported in **(2006) 3 SCC**

378 the Hon'ble Apex Court has held as follows:

31. It is settled by a catena of decisions that mental cruelty can cause even more serious injury than the physical harm and create in the mind of the injured appellant such apprehension as is contemplated in the section. It is to be determined on whole facts of the case and the matrimonial relations between the spouses. To amount to cruelty, there must be such wilful treatment of the party which caused suffering in body or mind either as an actual fact or by way of apprehension in such a manner as to render the continued living together of spouses harmful or injurious having regard to the circumstances of the case.

32. The word “cruelty” has not been defined and it has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of



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matrimonial duties and obligations. It is a course of conduct and one which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. There may be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted.

33. The cruelty alleged may largely depend upon the type of life the parties are accustomed to or their economic and social conditions, their culture and human values to which they attach importance. Judged by the standard of modern civilisation in the background of the cultural heritage and traditions of our society, a young and well-educated woman like the appellant herein is not expected to endure the harassment in domestic life whether mental, physical, intentional or unintentional. Her sentiments have to be respected, her ambition and aspiration taken into account in making adjustment and her basic needs provided, though grievances arising from temperamental disharmony are irrelevant. This view was taken by the



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*Kerala High Court in Rajani v. Subramonian [AIR 1990
Ker 1 : (1990) 1 DMC 561]*

*34. In (1993) 2 Hindu LR 637 (sic), the Court had gone to
the further extent of observing as follows:*

*“Sometime even a gesture, the angry look, a sugar-coated
joke, an ironic overlook may be more cruel than actual
beating.”*

*35. Each case depends on its own facts and must be
judged on these facts. The concept of cruelty has varied
from time to time, from place to place and from individual
to individual in its application according to social status
of the persons involved and their economic conditions and
other matters. The question whether the act complained of
was a cruel act is to be determined from the whole facts
and the matrimonial relations between the parties. In this
connection, the culture, temperament and status in life and
many other things are the factors which have to be
considered.*

*36. The legal concept of cruelty which is not defined by the
statute is generally described as conduct of such character
as to have caused danger to life, limb or health (bodily
and mental) or to give rise to reasonable apprehension of*



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such danger. The general rule in all questions of cruelty is that the whole matrimonial relation must be considered, that rule is of a special value when the cruelty consists not of violent act but of injurious reproaches, complaints, accusations or taunts. It may be mental such as indifference and frigidity towards the wife, denial of a company to her, hatred and abhorrence for wife, or physical, like acts of violence and abstinence from sexual intercourse without reasonable cause. It must be proved that one partner in the marriage however mindless of the consequences has behaved in a way which the other spouse could not in the circumstances be called upon to endure, and that misconduct has caused injury to health or a reasonable apprehension of such injury. There are two sides to be considered in case of cruelty. From the appellant's side, ought this appellant to be called on to endure the conduct? From the respondent's side, was this conduct excusable? The court has then to decide whether the sum total of the reprehensible conduct was cruel. That depends on whether the cumulative conduct was sufficiently serious to say that from a reasonable person's point of view after a consideration of any excuse which the



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respondent might have in the circumstances, the conduct is such that the petitioner ought not be called upon to endure.

37. As to what constitutes the required mental cruelty for the purposes of the said provision, will not depend upon the numerical count of such incidents or only on the continuous course of such conduct but really go by the intensity, gravity and stigmatic impact of it when meted out even once and the deleterious effect of it on the mental attitude, necessary for maintaining a conducive matrimonial home.

38. If the taunts, complaints and reproaches are of ordinary nature only, the court perhaps need consider the further

question as to whether their continuance or persistence over a period of time render, what normally would, otherwise, not be so serious an act to be so injurious and painful as to make the spouse charged with them genuinely and reasonably conclude that the maintenance of matrimonial home is not possible any longer.



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39. *The modern view of cruelty of one spouse to another in the eye of the law has been summarised as follows in (1977) 42 DRJ 270 (sic) Halsbury's Laws of England, Vol. 12, 3rd Edn., pp. 270-71:*

“The general rule in all questions of cruelty is that the whole matrimonial relations must be considered, and that rule is of special value when the cruelty consists not of violent acts, but of injurious reproaches, complaints, accusations or taunts. Before coming to a conclusion, the judge must consider the impact of the personality and conduct of one spouse on the mind of the other, and all incidents and quarrels between the spouses must be weighed from that point of view. In determining what constitutes cruelty regard must be had to the circumstances of each particular case, keeping always in view the physical and mental condition of the parties, and their character and social status.”

40. *This Court in N.G. Dastane (Dr.) v. S. Dastane [(1975) 2 SCC 326 : AIR 1975 SC 1534] observed as under: (SCC p. 338, para 32)*

“The Court has to deal, not with an ideal husband and an ideal wife (assuming any such exist) but with the particular



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man and woman before it. The ideal couple or a near-ideal one will probably have no occasion to go to a matrimonial court for, even if they may not be able to drown their differences, their ideal attitudes may help them overlook or gloss over mutual faults and failures.

16.Thus, from the above pronouncements it is clear that what constitutes cruelty will depend on the facts and circumstances of each case. Broadly, the Court has to see whether the acts of cruelty alleged by one party against the other party to the marriage is likely to have prolonged psychological effect on both of them and it cannot be reasonably expected that they would live with each other peacefully. The allegations must be more serious than the ordinary wear and tear of family life. In order to constitute cruelty, the numerical count of incidents constituting cruelty is not necessary. The impact of the conduct even when meted out once, if it has the effect of preventing a conducive matrimonial home and if it is impossible to live together with mental agony, then it would constitute cruelty for the purpose of granting divorce.



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17. We will have to examine the conduct of the parties in the light of the above principles of law. We find that the respondent established the fact that the appellant, her brother, father and others trespassed into his house and attempted to assault him. This was the last incident which ended the otherwise disturbed matrimonial relationship. Till then, it appears that both the parties did not think of divorce though there were serious allegations traded against each other and were living separately. The incident of attack with weapons is likely to cause the prolonged psychological effect on the respondent. It is impossible to have a conducive matrimonial life after such incidents. That apart, the parties even if they had not established adultery as against each other have made allegations specifying the names of the persons with whom the other party is having illegal relationship. This is also another reason to prevent a conducive matrimonial life. Further, the parties have been living separately since 2007. Therefore, we are of the view that the learned trial Judge has correctly concluded that the respondent had established cruelty and dissolved the marriage on the ground of cruelty and granted decree of divorce. We are also informed that after the decree of divorce, the respondent has married another person.



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18. The learned counsel for the appellant would submit that even if this Court confirms the decree of divorce, this Court can direct the respondent to pay permanent alimony to the appellant even if there is no application. The learned counsel relied upon the Judgment of the Division Bench of this Court reported in **1996-1 L.W 697(Chandrika vs M.Vijayakumar)**, in support of his submission. We are of the view that in the absence of any evidence let in to prove the status and financial capacity of the parties, we cannot fix any permanent alimony. We are also informed that the appellant has obtained an order for maintenance in M.C.O.P.No.51 of 2008. It is open to the appellant to pursue her remedy to execute the said order. It is needless to say that she can also file application under Section 25 of the Hindu Marriage Act for permanent alimony before the family court.

19. With the above observations, this Civil Miscellaneous Appeal is dismissed. No Costs. Consequently, the connected miscellaneous petition is closed.



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