



C.M.A.No.3575 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:18.11.2022

CORAM:

**THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN**

**C.M.A.No.3575 of 2021
and
C.M.P.No.11488 of 2022**

Arulraj

... Appellant

Vs.

Shanmugapriya

... Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 19 of Family Court Act, 1984 praying to set aside the order and decreetal order dated 03.03.2021 passed in H.M.O.P.No.9 of 2018 on the file of the Family Court, Villupuram.

For Appellant : Mrs.S.Uma Maheswari

For Respondent : No appearance.



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J U D G M E N T

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

The appellant has preferred the above Appeal challenging the order passed in H.M.O.P.No.9 of 2018 dismissing his petition for divorce filed on the ground of cruelty and desertion against the respondent herein.

2.The brief averments in the Petition filed for divorce on the ground of cruelty and desertion are as follows:

a. The Appellant married the Respondent on 19.03.2014. The Appellant and the Respondent lived together hardly for a few months. The Appellant was working in Singapore and he took the Respondent to Singapore four times on tourist visa. In Singapore, they did not lead a happy life. The Respondent used to pick up unnecessary quarrels with the land lord and then, instigate the Appellant to go and fight with the land lord. The Respondent, whenever, she visited India used to live in the house of the Appellant's parents for sometime and thereafter, pick up quarrel and leave to her parent's house. The Appellant made all efforts to bring her back and all



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the efforts failed. In the first week of October 2014, the Respondent left the matrimonial home and started living with her parents. Thereafter, she never returned to the matrimonial home. The Appellant and the Respondent hardly lived for 137 days together. The Appellant, therefore, submitted that there was a irretrievable break down of marriage and there is no way of leading a peaceful matrimonial life with the Respondent and hence, prayed for dissolving the marriage on the ground of cruelty and desertion.

b. The Respondent herein filed a counter stating that it is false to allege that they got separated in the year 2014 itself. She lived with the Appellant till 2016 and she went to Singapore with a fond hope that she can lead a happy matrimonial life with the Appellant. The Appellant's mother used to scold her by using filthy language and she was treated very badly in the house of the Appellant. In Singapore, the Appellant took her to the place where she had to share the hall, kitchen and pooja room with other people. She had only one room for privacy and for the whole day, she was confined to that room. She was stressed and depressed because of the action of the Appellant. The Appellant's family was always interested only in money and all the persons in the Appellant's family dominated her and they used to abuse her. They used



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to abuse her saying that she was responsible for all the bad events that took place in the Appellant's house. The Appellant never spoke to her, when he was away in Singapore. Whenever he called from Singapore, the mother-in-law and sister-in-law grabbed the phone from her and never allowed her to speak to the Appellant. She was treated like a chattel in the house of the Appellant. Ultimately, unable to bear the cruelty meted out to her, she was driven out of the house in the year 2016. Her father picked her and thereafter, she left to her parent's house. All the attempts made by her to reunite ended in vain. She had given dowry of not less than 50 sovereigns to the Appellant. The Appellant have retained those jewels and refused to return the same. Hence, she prayed that the Petition for divorce may be dismissed.

3.Before the Family Court, the Appellant examined himself as PW1 and his mother as PW2. He marked three documents viz., Ex.P.1 to Ex.P.3. Ex.P.3 is a computer disk containing the conversation between the Appellant and the uncle of the Respondent. The Respondent examined herself as RW1 and did not mark any document on her side. The trial Court found that the allegations of cruelty and desertion have not been made out by the Appellant.



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The trial Court dismissed the divorce petition holding that the allegations and averments made by the Appellant was relating to a normal wear and tear in any family life. The allegations are not grave enough to grant a decree of divorce.

4.The Appellant, aggrieved by the order of the Learned Judge, has filed the above Appeal.

5.The learned Counsel for the Appellant submitted that the subsequent events ought to be taken into consideration for considering the prayer for divorce. The conduct of the Respondent in not being interested in the matrimonial life is a ground for divorce on the ground of mental cruelty. The Appellant tried his best to save the marriage and took her to Singapore four times within a span of one year to see if there is a possibility of leading a peaceful matrimonial life. Even in Singapore, she caused mental cruelty to the Appellant by picking up unnecessary quarrels with the land lord and other tenants in the house. The Respondent was very well aware that in Singapore, it is impossible to get an independent house for a person of the Appellant's



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status. They had to necessarily stay in a house like that and the Respondent refused to adjust. The Respondent's conduct in fighting with the land lord and neighbours has caused tremendous harassment to him. Even in Chennai, whenever she stayed in the house of the Appellant, the Respondent used to pick up quarrels with the Appellant's mother and his sister. The Respondent always abused the mother of the Appellant for ill treating her and used to leave the matrimonial house often. On one occasion, she refused to eat food for nearly two days and it was only on that occasion, the Appellant's mother got frightened and informed the Respondent's father. The Respondent left with her father and refused to come back to the matrimonial home. Thereafter all efforts taken by the Appellant to lead a peaceful life ended in vain. Continuously the Respondent started giving complaint to the police and in fact, the Appellant had filed Crl.O.P.No.11817 of 2021 before this Court praying for the direction to the police not to harass him on the ground of the false complaint given by the Respondent. This Court by order dated 12.07.2021 passed an order and the relevant portion of the order reads as follows:

“4.In view of the same, the second and third



respondents are directed to not to call the petitioner for any enquiry and if the second and third respondents feels that her presence is absolutely necessary, prior notice should be issued, visit the house of the petitioner and record her the statement if needed. It is the further contention that the second and third respondents at the instance of the fourth respondent is forcing the petitioner to give accommodation to the fourth respondent. Admittedly, the fourth respondent from the year 2018 has been living with her parents. Hence, in this case undue process and threat given by the second and third respondents are unwarranted.”

6.The Learned Counsel for the Appellant further submitted that the Respondent had not filed any Petition for restitution of conjugal rights. This itself shows that she was not interested in living with the Appellant. The Respondent had always threatened of giving false complaint against the Appellant and in-laws. In fact, the Appellant produced Ex.P.3, which is the record of the telephone conversation with the uncle of the Respondent. The uncle of the Respondent admitted that the Appellant had never demanded any dowry. Therefore, the Respondent was in the habit of making false allegation. The marriage has reached the stage where it is impossible for



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reunion and for leading a peaceful matrimonial life. The other conduct of the

Respondent in not appearing before this Court, in spite of several hearings is the conduct in which the Hon'ble Apex Court has observed to be the relevant factor for considering the Petition for divorce. After the Petition for divorce was dismissed by the Family Court, the Respondent with the help of the police barged into the house of the Appellant. Therefore, the Appellant had to seek police protection. During the course of the said attempt made by the Respondent, the Appellant served on her the copy of the Appeal and also got an acknowledgment and thereafter, the police left the place. Therefore, the Respondent was aware of the proceedings. That apart, notice sent to the Respondent from Court and privately has been served on the Respondent. The conduct of the Respondent in avoiding this proceedings is another ground as per the Judgment of the Hon'ble Apex Court reported in **"2017 9 SCC 632"**. The Learned Counsel for the Appellant submitted that this conduct of the Respondent in giving police complaint and making the threats of giving false complaint is grave enough to cause mental cruelty to the Appellant. Admittedly, the Appellant and the Respondent are living separately since 2016. Now, it is almost six years, since, they have been



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separated from each other. The other conduct of the Respondent in not indulging in conjugal relationship for a long period of time is also another ground for causing mental cruelty. The conduct of the Respondent, subsequent to the filing of the divorce Petition is therefore, relevant and the Court has not considered the same and prayed for allowing the appeal.

Though notice has been served on the respondent and her name is printed in the cause list, there is no representation for her either in person or through Counsel.

7.We have considered the pleadings, evidence and documents on record.

8.Point for consideration:

Whether the Appellant is entitled for a decree of divorce on the ground of cruelty and desertion?

The Respondent has been served both through Court and privately. The Learned Counsel for the Appellant has brought to our notice the earlier orders passed by this Court wherein this Court had recorded the fact that the Respondent had received the papers relating to the Petition filed by the



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Appellant before the Court. The Respondent attempted to enter into the house of the Appellant after the dismissal of the divorce petition by the Family Court. The Appellant approached the Police and it was then the Appellant served the appeal papers to the Respondent. Therefore, the Respondent is aware of the proceedings before the Court. The Respondent has deliberately avoided the proceedings and has not appeared inspite of her knowledge of the proceedings and service of notice on her. This conduct is a relevant factor in a Petition for divorce. The Hon'ble Apex Court in ***Sukhendu Das v. Rita Mukherjee*** reported in **(2017) 9 SCC 632** has held as follows:

7. The respondent, who did not appear before the trial court after filing of written statement, did not respond to the request made by the High Court for personal appearance. In spite of service of notice, the respondent did not show any interest to appear in this Court also. This conduct of the respondent by itself would indicate that she is not interested in living with the appellant. Refusal to participate in proceeding for divorce and forcing the appellant to stay in a dead marriage would itself constitute mental cruelty (Samar Ghosh v. Jaya Ghosh [Samar Ghosh v. Jaya Ghosh, (2007) 4 SCC 511, p. 547, para 101(xiv)]). The High



Court observed that no attempt was made by either of the parties to be posted at the same place. Without entering into the disputed facts of the case, we are of the opinion that there is no likelihood of the appellant and the respondent living together and for all practical purposes there is an irretrievable breakdown of the marriage.

The Hon'ble Apex Court has held that this conduct itself would show that the marriage has become dead and any effort made to revive a dead marriage itself would cause mental cruelty.

9.That apart, we agree with the submission made by the Learned Counsel for the Appellant that the conduct of the Respondent in filing false complaint before the police is likely to cause mental cruelty to the Appellant. The Respondent had filed police complaint earlier. The Appellant was forced to file a Petition before this Court praying for a direction not to harass the Appellant on the false complaint given by the Respondent. This Court had directed the police not to harass the Appellant. This is enough to establish



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that the Respondent was in the habit of giving false complaints against the Respondent.

10.Further, the Learned Counsel for the Appellant submitted that after the divorce was refused by the Family Court, the Respondent approached the police and made an attempt to barge into the house of the Appellant. This, in our view, is again likely to cause mental cruelty to the Appellant. The Appellant lived with the Respondent only for 137 days. The Appellant had faced mental cruelty when he lived with the Respondent in Singapore and thereafter, the Respondent lived in the Appellant's house in India. Those allegations of cruelty coupled with the complaints made by the Respondent and this present conduct of not appearing before this Court, in our view, establishes that the marriage has become dead and there was irretrievable break down of the marriage. They have been living separately since 2016 as the Appellant has been denied conjugal relationship for a fairly long period of time. The above facts would establish cruelty. We rely upon the Judgment of the Hon'ble Apex Court “**Samar Ghosh v. Jaya Ghosh**, reported in (2007) 4 SCC 511 : 2007 SCC OnLine SC 423”, wherein it is held that-



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101. No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behaviour which may be relevant in dealing with the cases of “mental cruelty”. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive:

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

(iii) Mere coldness or lack of affection cannot amount to cruelty, frequent rudeness of language, petulance of manner, indifference and neglect may reach such a degree that it makes the married life for the other spouse absolutely intolerable.

(iv) Mental cruelty is a state of mind. The feeling of deep anguish, disappointment, frustration in one spouse



caused by the conduct of other for a long time may lead to mental cruelty.

(v) A sustained course of abusive and humiliating treatment calculated to torture, discommode or render miserable life of the spouse.

(vi) Sustained unjustifiable conduct and behaviour of one spouse actually affecting physical and mental health of the other spouse. The treatment complained of and the resultant danger or apprehension must be very grave, substantial and weighty.

(vii) Sustained reprehensible conduct, studied neglect, indifference or total departure from the normal standard of conjugal kindness causing injury to mental health or deriving sadistic pleasure can also amount to mental cruelty.

(viii) The conduct must be much more than jealousy, selfishness, possessiveness, which causes unhappiness and dissatisfaction and emotional upset may not be a ground for grant of divorce on the ground of mental cruelty.

(ix) Mere trivial irritations, quarrels, normal wear and tear of the married life which happens in day-to-day life would not be adequate for grant of divorce on the ground of mental cruelty.



(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behaviour of a spouse, the wronged party finds it extremely difficult to live with the other party any longer, may amount to mental cruelty.

(xi) If a husband submits himself for an operation of sterilisation without medical reasons and without the consent or knowledge of his wife and similarly, if the wife undergoes vasectomy or abortion without medical reason or without the consent or knowledge of her husband, such an act of the spouse may lead to mental cruelty.

(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty.

(xiii) Unilateral decision of either husband or wife after marriage not to have child from the marriage may amount to cruelty.

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the



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matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.

11.Further, 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 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



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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 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 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.



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(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 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 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 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]]”



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12. Further, we also rely upon the Judgment of the Hon'ble Apex Court

in “**Vinita Saxena vs. Pankaj Pandi** reported in (2006) 3 SCC 378” wherein it is 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 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



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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 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 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



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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 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.

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



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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 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.

13. Further, we also rely upon the Judgment of the Hon'ble Apex Court in “***Naveen Kohli v. Neelu Kohli*** reported in “**(2006) 4 SCC 558**” wherein



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it is held as follows:

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“86. In view of the fact that the parties have been living separately for more than 10 years and a very large number of aforementioned criminal and civil proceedings have been initiated by the respondent against the appellant and some proceedings have been initiated by the appellant against the respondent, the matrimonial bond between the parties is beyond repair. A marriage between the parties is only in name. The marriage has been wrecked beyond the hope of salvage, public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. To keep the sham is obviously conducive to immorality and potentially more prejudicial to the public interest than a dissolution of the marriage bond.

87. The High Court ought to have visualised that preservation of such a marriage is totally unworkable which has ceased to be effective and would be greater source of misery for the parties.”

14. Applying the above legal principles to the instant case, we have no hesitation in holding that the marriage between the Appellant and the Respondent has become dead. The marriage is existing only on paper.



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Refusing to sever that tie itself would lead to mental cruelty and the parties are living separately since 2016. For the above reasons, we are of the view that this marriage deserves to be dissolved and hence dissolved on the ground of cruelty. The evidence adduced by the parties does not support the case of the Appellant as regards desertion.

15. In nut shell,

(i) The appeal is allowed granting decree of divorce, by setting aside the fair and decretal order passed in H.M.O.P.No.9 of 2018 dated 03.03.2021 on the file of the Family Court, Villupuram.

(ii) The original petition in H.M.O.P.No.9 of 2018 stands allowed.

(iii) In the facts and circumstances of the case, there is no order as to costs. Consequently, connected miscellaneous Petition is closed.

(V.M.V.,J)

(S.M.,J.)

18.11.2022



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