



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.11.2022

Pronounced on : 01.12.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.Nos.53 and 54 of 2018

&

C.M.P.No.722 of 2017 &

CMP.No.20244 of 2022

G.P. Rajkumar

... Appellant in
both appeals

Vs.

Sunanthini

... Respondent in
both appeals

Prayer in CMA.No.53 of 2018: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act against the judgment and decree dated 31.10.2017 in O.P.No.3476 of 2008 on the file of V Additional Family Court, Chennai.

1/29



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

Prayer in CMA.No.54 of 2018: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act against the judgment and decree dated 31.10.2017 in O.P.No.976 of 2010 on the file of V Additional Family Court, Chennai.

For Appellant in both appeals : Mr. K. Chella Pandian,
Senior Counsel for
Mr.S.Yashwanth

For Respondent in both appeals : Mr.J.Saravanel

J U D G M E N T

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

The unsuccessful husband has filed the above appeals challenging the dismissal of his petition for divorce in O.P.No.3476 of 2008 and allowing of the petition filed by the wife in O.P.No.976 of 2010 for restitution of conjugal rights by the learned V Additional Principal Judge, Family Court, Chennai.

2. For the sake of convenience, the appellant hereinafter is referred to as husband and the respondent, as wife.

2/29



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

3. The husband had filed a petition in O.P.No.3476 of 2008 before the V Additional Family Court, Chennai for divorce on the ground of cruelty by making the following averments.

(a) The marriage between the husband and wife took place on 22.05.2005 at Tutocorin. After marriage, they started their matrimonial life at Chennai. At the time of marriage, the appellant was employed in a company at USA. The husband took the wife to USA on 20.06.2005, since the visa process could not be completed till then. He had taken a lot of care to make the wife comfortable during the stay in USA. However, the wife due to her conduct, made the relationship difficult. The respondent was in the habit of abusing the husband in filthy language. She always made threats of filing of a false complaint and ensure that the husband loses his job. She was in the habit of sending e mails containing abusive language which would reflect her sadistic approach.

(b) The respondent wife never allowed the husband to meet his friends and always suspected the character of the husband. She made false accusations of the husband having illicit relationship with other women.



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

The wife sent an e-mail to the husband on 26.03.2007 stating that she could have lodged a complaint against the husband and his relatives under section 498A IPC. Even during casual conversations, she would threaten the husband of false complaints. The respondent behaved in an unruly manner and on several occasions banged her head on the wall to ensure that the husband comes to her terms.

(c) The wife threatened of committing suicide while the husband was away in USA which forced the parents of the husband to give a complaint about the respondent to the Inspector of Police, Ashok Nagar Police Station.

(d) The wife had sent an e-mail to his employer and to the Embassy making false allegations against the husband. The husband came to know of the e-mails when the employer asked for explanation from him. Realising that the marriage had irretrievably broken down, the husband sent a legal notice on 05.09.2008 to the respondent and the said notice was returned, unserved and hence he filed the petition for divorce.



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

4 (a) The wife filed a counter denying the averments made in the petition for divorce. She was subjected to cruelty by the husband's mother. However, she never complained the same to the husband because, he would feel troubled or burdened. She was always a dutiful wife. She had sent a few e-mails only due to her love and affection. She did not intend to bother the husband. On certain occasions when the husband did not care for the wife, she had sent e-mails to express her mental agony. She had always satisfied the sexual needs of the husband, even though on certain days, she was not willing and unwell. During one occasion, where the husband and wife were in intimacy, the husband uttered the name of another girl which wounded the wife. When she was subjected to harassment in the form of physical and verbal abuse, she informed the husband that she had a right to give a complaint under section 498A IPC.

4(b) On 24.01.2011 when she went to meet the husband in his office, she was kicked and beaten up by the husband. She was treated in a hospital where she took CT scan, which revealed that she had sustained internal injuries. Though the husband committed an offence, she refrained



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

from giving any complaint in order to preserve the marriage. The husband never cared for the child and he was in the habit of provoking the wife and in such situations, the wife had employed harsh language due to her frustration and that is sought to be blown out of proportion by the husband, as acts of cruelty. The husband and wife went for counselling by a Psychiatrist and the husband refused to cooperate in the counselling sessions because of his adamant attitude.

5. Two years after the petition filed by the husband, the wife has filed O.P.No.976 of 2010 for restitution of conjugal rights reiterating the averments made in the counter in the divorce petition. Likewise, the husband filed a counter in the restitution of conjugal rights petition in O.P.No.976 of 2010 reiterating the averments made in his divorce petition.

6. Before the Family Court, the husband examined himself as PW1 and marked Ex.P.1 to Ex.P.9. The wife examined herself and her sister as RW1 and RW2 and marked Exhibits Ex.R.1 to R5.



CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022

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7. The V Additional Principal Judge, Family Court, Chennai dismissed the petition filed by the husband for divorce stating that the husband had not proved the allegations of cruelty against the wife. The V Additional Principal Judge, Family Court, Chennai allowed the petition filed by the wife for restitution of conjugal rights stating that her petition was bonafide and she is entitled to conjugal rights.

8. Aggrieved over the dismissal of divorce petition in O.P.No.3476 of 2008 and allowing the petition for restitution of conjugal rights by the V Additional Principal Judge, Family Court, Chennai, the husband has filed the present appeals in C.M.A.Nos.53 and 54 of 2018 respectively.

9(a) When the case was posted for the arguments of the respondent/wife's counsel, the counsel sought permission of this court to take up CMP.No.20442 of 2022 filed before this court seeking to let in additional evidence by marking few documents viz;

- 1. screenshot of the e-mails sent by husband's girl
friend to wife with photo attachment*



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CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022

2. *pendrive with the conversation between husband's
girl friend and the wife with transcript.*

9(b) In the said CMP.No.20244 of 2022, the husband filed a counter denying the contents of the said e-mail and submitted that in any case, the authenticity of the e-mail communications has not been established. The wife cannot be allowed to mark documents which have not been proved and tested by cross examination at the belated stage after the appellant/husband's counsel made his submissions.

9(c) We find that the documents sought to be let in as additional evidence is an e-mail communication said to have been sent by a person with whom, the appellant is said to have had extra marital relationship and a pen drive which is said to contain the conversation between the said person with the wife. In our view, the said documents cannot be taken as additional evidence in the absence of proper proof. Hence, we dismiss C.M.P.No.20242 of 2022 seeking permission to wife to let in additional evidence by marking documents.



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

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10(a) Mr.K.Chellapandian, learned Senior Counsel appearing for the appellant/husband submitted that the wife committed cruelty in many ways. The documents filed by the husband would show the cruelty meted out to him. Besides that, the wife in the counter filed to the divorce petition and in the petition for restitution of conjugal rights and during her cross examination, has admitted to certain facts which will clearly establish that the husband suffered mental cruelty. The learned counsel read to us the e-mails sent by the wife to the husband which were marked as Exs.P3, P6 and P7, in which, the wife had threatened the husband of filing a complaint against him and his relatives for an offence under section 498A IPC. A reading of the materials would also suggest that she had used unparliamentary language against the husband besides making indecent comments about him. She had also made a complaint to the employer of the husband stating that he had started a company contrary to the interest of the employer. Because of these e-mails, the husband not only suffered mental agony, but was called upon to give explanation to his employer, which emotionally disturbed him. The husband had to change jobs only because of the conduct of the wife in giving complaint to



CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022

all his employers. Ex.P.4, which is CSR receipt would show that the parents of the husband gave a complaint to Ashok Nagar Police Station stating that the wife had threatened of committing suicide.

10(b) The learned Senior Counsel further submitted that the appellant and the respondent are living separately since 2010. The marriage has become dead and has irretrievably broken down. He further submitted that the wife also made false allegations of adultery against the husband and that he led an immoral life. The learned Senior Counsel relied upon the following judgments of the Apex Court in support of his submission where the conduct of the parties suggest that the matrimonial bond is beyond repair, the marriage would become sham and dejure declaration of dissolution of marriage is necessary to the marriage which is already dead defacto:

(a) Naveen Kohli Vs. Neelu Kohli reported in AIR

2006 (SC) 1675;

(b) Samar Ghosh Vs. Jaya Ghosh reported in 2007 (4)

SCC 511

10/29



CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022

(c) K. Srinivas Rao Vs. D.A. Deepa reported in 2013

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(5) SCC 226

***(d) Sukhendu Das Vs. Rita Mukherjee reported in
2017 (9) SCC 632***

***(e) Order passed by this Court in CMA.No.3249 of
2017, dated 05.07.2022***

***(f) Order passed by this Court in CMA.No.1319 of
2014, dated 21.07.2022***

11(a) Per contra, the learned counsel for the wife submitted that the wife had not made any false allegations against the husband and in fact, the petition filed by him to let in additional evidence by marking a few photographs and e-mails sent by the husband's girl friend to the wife to show that the husband cheated on the wife.

11(b) The learned counsel for the respondent/wife further submitted that the allegations made against the wife were without any basis. Trivial incidents which is common in any marriage is sought to be exaggerated.



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

The words spoken by the wife, when she was emotionally disturbed by the conduct of the husband, cannot be taken as acts of cruelty. These are acts which is only a normal wear and tear in any marriage. The husband is a wrong doer and he is seeking to take advantage of his own wrong and therefore he is not entitled to any relief, as per Section 23 of the Hindu Marriage Act.

11(c) The learned counsel further submitted that the e-mails marked as Ex.P.3 and Ex.P.6 were not e-mails sent by the wife and the husband had fabricated the e-mails to make it appear that the wife committed cruelty. Ex.P.7 e-mail is admitted by the wife. The e-mail IDs in Ex.P.7 and the e-mail ID in Ex.P.3 and Ex.P.6 would show that they are different. The wife had never used the e-mail ID mentioned in Ex.P.3 and Ex.P.6. The wife always mentioned her name as 'Sunandhini Rajkumar' and not as "Sunandhini Vivekanandan" as found in Ex.P.3 and Ex.P.6 e-mails. Therefore the e-mails cannot be put against the wife to show that she committed cruelty.



CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022

11 (d) Further, Ex.P.4 is a Xerox copy of an alleged CSR receipt issued by the police. The said document cannot be relied upon since the husband has not filed the original of the said receipt. The husband is guilty of committing various wrongs and based on the fault theory, which means that he can seek divorce only on the ground of opponent's fault and not when he is guilty of committing a wrong. The learned counsel therefore, submitted that isolated incidents which, if taken as a whole, would only amount to trivial irritations, quarrels and normal wear and tear of marriage life which happens in families. Those instances cannot be the basis for holding that the wife is guilty of cruelty. The learned counsel relied upon the following Judgments of Hon'ble Apex Court in support of his submissions:

1. ***Chetan Dass Vs. Kamala Devi*** reported in **2001(4)SCC250**.
2. ***Neelam Kumar vs. Dayarani*** reported in **2010 13 SCC 298**.
3. ***Gurbux Singh vs. Harminder Kaur*** reported **2010 (14) SCC 301**
4. ***Darshan Gupta Vs. Radhika Gupta*** reported in **2013 (9) SCC 1**
5. ***Ramachander vs. Ananta*** reported in **2015(11) SCC 539**



CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022

6. *Mangayakarasi vs. M. Yuvaraj* reported in 2020(3) SC 786

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The learned counsel also relied upon the Judgement of this Court in

***P.Manimekalai vs. R.Kothandaraman* reported in 2010 (6) CTC 80**

12. Heard the learned Senior Counsel appearing for the appellant/husband and learned counsel appearing for the respondent/wife and perused the pleadings, evidence both oral and documentary.

13. Admittedly, the marriage between the husband and the respondent took place in the year 2005. The allegations and counter allegations made by the husband and wife against each other would show that the relationship was not conducive and peaceful since 2007. It is also an admitted fact that they have been living separately since 2010. Though we are rejecting the application filed by the wife for letting in additional evidence, since the documents sought to be adduced has to be proved in accordance with law, however, we may note that the wife has made certain allegations in the affidavit filed in support of the said petition that the husband had extra marital relationship. The wife has also made certain



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

averments in the counter filed to the divorce petition which would suggest that she had suffered cruelty at the hands of the husband. Infact, in the counter, she had admitted that she had sent a few e-mails in anguish to the husband, though during her cross examination before the court, she would deny the specific e-mails shown to her. She had also admitted that though she has suffered cruelty at the hands of the husband, she only threatened her husband of filing complaint against him and never filed any complaint. She also admits in her proof affidavit that she made a threat of suicide on one occasion and the parents of the husband gave complaint against her. The respondent wife while denying Ex.P.3 and Ex.P.6 e-mails, had given a vague answer during her cross examination when a question was put by the counsel as to whether the e-mail Id shown was hers. She had said that it may be hers. The respondent/wife further when confronted with the contents of the e-mails, she would say that the e-mails were not sent by her, but she would admit that she had told the husband that she would file a complaint under Section 498A IPC and that she also told that she would commit suicide.



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

14. Ex.P.7 is admitted by the wife. It is an e-mail sent by the wife to the employer of the husband, wherein, she had accused the husband of running another company. To the said e-mail sent by the wife, the employer of the husband had stated that the allegations are serious and they would like to investigate this matter in detail. The respondent had sent another reminder on 13.3.2012 asking for details of the result of the investigation conducted by the employer. The employer had replied on the same day stating that the husband had resigned the job. The exchange of the e-mails between the wife and the employer of the husband narrated above which is marked as Ex.P.7 would show the conduct of the wife. This in our view is bound to cause mental cruelty to the husband. The e-mails show that the husband had resigned the job pursuant to the letter written by the wife to the employer of the husband. Though Ex.P.3 and Ex.P.6 are denied by the wife, the wife has admitted that she had made threats of suicide and also threatened of filing a complaint under Section 498A IPC against the husband and his relatives.



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

15. The wife had not taken any steps for re-union and would admit that she had filed a petition for restitution of conjugal rights 15 months after the husband had filed a petition for divorce. Further Ex.P.4 would show that the husband's parents were also subjected to mental agony which forced them to give a complaint to the Ashok Nagar Police Station that the wife threatened to commit suicide. These instances are bound to cause mental cruelty to the husband who has been living in USA.

16. The narration of the facts stated above would show that the allegations and counter allegations of the husband and wife are such that the incidents cannot be considered trivial. The husband losing a job or resigning a job on account of the wife's sending a letter to his employer, threats of suicide, threats of filing a complaint under Section 498A IPC, cannot be brushed aside as trivial instances. Though the learned counsel for the wife would submit that these are normal wear and tear in any married life and the wife did it out of love and affection and not harm the husband, we are unable to persuade ourselves with the said submission.



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

17. Appreciation of mental cruelty in civil law and criminal law are different. In criminal law, the intention of the offender is relevant, whereas in the civil law, the agony that would cause to one party to the marriage on account of the other party's conduct is relevant, even if the other party's acts were not deliberate and intentional. However, in this case, we find that the wife's act cannot be called as unintentional from the facts and circumstances of the case.

18.The Judgments relied upon by the learned counsel for the respondent, for the proposition that:

(a)(i) Irretrievable breakdown of marriage cannot be applied in a Straight Jacket Formula.

(ii) The party seeking relief cannot be allowed to take advantage of his own wrong and seek relief on that ground (Chetan Dass Vs. Kamala Devi 2001(4)SCC250)(para-19)

(b)Trivial irritations and isolated incidents cannot be characterized as cruelty. The party seeking divorce has to allege and prove which part of



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

the conduct caused cruelty to him/her (Gurbux Singh vs. Harminder Kaur 2010 (14) SCC 301.para16)

(c) In order to establish mental cruelty, the Court has to ascertain whether the impact of the conduct of one spouse had caused reasonable apprehension in the mind of the other spouse that it would be harmful or injurious to live together. (P.Manimekalai vs. R.Kothandaraman 2010 (6) CTC 80) (para 12 and 13)

(d) The party to marriage who by his/her own conduct contributed to the breakdown of marriage cannot seek divorce (Neelam Kumar vs. Dayarani 2010 13 SCC 298. Para 14)

(e) In matrimonial Jurisprudence the grounds mentioned for divorce in Section 13 (1) of Hindu Marriage Act would show that they are based on fault theory which means that divorce can be granted only on the opponent's fault and not on one's own fault. (Darshan Gupta Vs. Radhika Gupta 2013 (9) SCC 1. Para 46)

(f) The instances of cruelty cannot be taken in isolation but the cumulative effect of facts and circumstances of the case has to be taken to



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

ascertain whether the person seeking divorce had been subjected to mental cruelty. (Ramachander vs. Ananta 2015(11) SCC 539 para10).

(g) The rule relating to continuous separation and irretrievable break down of marriage cannot be in a Straight Jacket Formula. In a case where the differences are not of such magnitude, the marriage cannot be dissolved merely because the parties have been living separately and litigating for quite sometime. (Mangayakarasi vs. M. Yuvaraj 2020(3)SC786) para 15).

There is no dispute with the above propositions of law. However the Courts have to bear in mind while deciding a petition for divorce, they are dealing with “the Husband”, “the Wife” and “the Marriage”. The facts in each case would be different and mental cruelty has to be assessed in the facts and circumstances of each case. In the case on hand, we have elaborated the facts. The established facts would show that the conduct of the wife is bound to cause mental cruelty to the husband.



CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022

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19. The Honourable Apex Court in the case of **“Samar Ghosh v. Jaya Ghosh**, reported in **(2007) 4 SCC 511 : 2007 SCC OnLine SC 423”**, held as follows;

'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



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CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022

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,



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CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022

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



CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022

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 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.

20. Further, we also rely upon the Judgment of the Hon'ble Apex Court in the case of **Naveen Kohli v. Neelu Kohli** reported in “**(2006) 4 SCC 558**” wherein it is held as follows:



CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022

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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.”

21. The judgments cited by the learned Senior counsel for the appellant/husband and the learned counsel for the respondent/wife also reiterate the same principles except that the decision in those cases, were made on the facts and circumstances obtaining in that case.



CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022

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22. Therefore applying the above principles, we are of the view that the marriage has to be dissolved for the following reasons;

- (a) the husband and wife are living separately since 2010.
- (b) The allegations made by the wife against the husband and the allegations made by the husband against his wife narrated would suggest that the matrimonial bond is beyond repair.
- (c) The appellant has established cruelty for the reasons stated in the earlier part of the Judgment.
- (d) The marriage is only on paper and refusal to sever the tie is bound to cause mental cruelty as held by the Hon'ble Apex Court in ***Samar Ghosh v. Jaya Ghosh*** cited supra.

23. In the result,

- (a) C.M.A.Nos.53 and 54 of 2018 are allowed.
- (b) O.P.No.3476 of 2008 filed by the appellant/husband on the file of V Additional Family Court,



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

Chennai seeking a decree and judgment for divorce by dissolving the marriage between the husband and wife is allowed.

(c) O.P.No.976 of 2010 filed by the respondent/wife on the file of V Additional Family Court, Chennai for restitution of conjugal rights is dismissed.

(d) C.M.P.No.20244 of 2022 filed by the respondent/wife seeking permission to let in additional evidence in CMA.No.53 of 2018 is rejected.

(e) The connected CMP.No.722 of 2018 in CMA.No.54 of 2018 is closed. No costs.

[V.M.V.,J.] [S.M.,J.]

01.12.2022

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msr/dk

27/29



*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

To

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1. The V Additional Family Court,
Chennai.
- 2.The Section Officer,
V.R.Section,Madras High Court,
Chennai.



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*CMA.Nos.53 and 54 of 2018 &
CMP.Nos.722 of 2018 and 20244 of 2022*

**V.M.VELUMANI,J.
and
SUNDER MOHAN,J.**

Msr/dk

Pre-Delivery Judgment in

C.M.A.Nos.53 and 54 of 2018
&
C.M.P.No.722 of 2017 &
CMP.No.20244 of 2022

01.12.2022