



C.M.A.No.2637 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **16.11.2022**

Coram:

The Hon'ble Ms. Justice **V.M.VELUMANI**
and
The Hon'ble Mr. Justice **SUNDER MOHAN**

C.M.A.No.2637 of 2021
and
C.M.P.No.14243 of 2022

V.Manivannan ... Appellant

Vs.

Durga ... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 19 of the Family Courts Act, 1984, against the fair and decreetal order dated 30.03.2021 in H.M.O.P.No.26 of 2018 on the file of the learned Judge, Family Court, Karaikal.

For Appellant : Mr.S.P.Vijayaragavan

For Respondent : Mrs. A.Vinu Pradha



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J U D G M E N T

[Judgment of the Court was made by
SUNDER MOHAN, J.]

This appeal has been preferred by the husband, challenging the order passed by the learned Judge, Family Court, Karaikal in H.M.O.P.No.26 of 2018 dated 30.03.2021, dismissing the petition filed by him for divorce on the ground of cruelty.

2. Heard Mr.S.P.Vijayaragavan, learned counsel appearing on behalf of the appellant and Mrs.A.Vinu Pradha, learned counsel appearing for the respondent.

3. The appellant in his divorce petition filed in H.M.O.P.No.26 of 2018 before the learned Judge, Family Court, Karaikal has stated that, the marriage between the appellant and the respondent took place on 19.10.2016. Ever since the marriage, the respondent was never interested in matrimonial life and always appeared to be frustrated and depressed. She often went



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to her parental house without any excuse or permission from the appellant. Out of their wedlock, on 09.10.2017, a female child was born to them. When the respondent continued with her unusual behaviour, the appellant and his father became suspicious and went to her parental house and enquired with the neighbours of the respondent and found to be shocked that she had a love affair with one Murugesan. Since both the families objected to their love affair, both Murugesan and respondent attempted suicide by consuming poison. Unfortunately, the said Murugesan died in the said attempt and the respondent was rescued and thereafter, the respondent's father arranged the marriage of the respondent with the appellant in a hurried manner without disclosing these events. The respondent always had the memories of Murugesan and never led a peaceful life with the appellant. The respondent left the matrimonial home after picking up quarrel with the appellant and his parents. The respondent, on one occasion had pushed the appellant's mother and abused her in filthy language. When the same was questioned by the appellant, she abused him also in filthy and disrespectful language. The respondent had lodged a false complaint before the Karaikal Police Station stating that the



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appellant neglected to take care of the respondent and her child.

The police mediated and compelled the appellant to pay maintenance to the respondent and the child. In fact, the appellant pleaded that the police to prevail upon the respondent to hand over the child to him as the respondent did not take care of the child well. But the police only compelled the appellant to pay maintenance to the respondent and the child. The appellant after this incident issued a lawyer notice on 05.04.2018 demanding divorce, as he felt that it was not possible to lead a peaceful matrimonial life with the respondent anymore. However, the respondent did not respond to the said notice issued on behalf of the appellant. Hence, the appellant had filed the divorce petition on the ground of cruelty.

4. The respondent denied all the averments made in the petition for divorce and stated that, it was the appellant, who had committed cruelty on her and the appellant and his family members harassed her to bring more jewels and dowry. The appellant and the respondent lived in Chennai for sometime and during their stay in Chennai, the appellant always came late and



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when questioned by the respondent, the appellant had made untenable allegations against the respondent and caused mental cruelty to her. The appellant was in the habit of listening to his parents and insulting the respondent. The averments in the divorce petition filed by the appellant are false. The allegations that she had a love affair with one Murugesan is also false. She was compelled to give the police complaint because the appellant abandoned her and the child and did not take care of them. Hence, the police had taken legal action and there is nothing wrong in the action taken by her in giving the police complaint. In fact, she had not responded to the lawyer's notice issued by the appellant because trading of allegations would spoil the chances of their reunion and she is always willing to live with the appellant.

5. Before the trial Court, witnesses P.W.1 to P.W.3 were examined on the side of the petitioner/appellant herein and Exs.P1 to P5 were marked. The witnesses RW.1 and R.W.2 were examined on the side of the respondent and Exs.R1 to R3 were marked.



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6. The trial Court, on consideration of the pleadings and evidences adduced found that the allegations of cruelty made by the petitioner/appellant herein are not sufficient enough to grant a decree of divorce. The learned Judge, Family Court, Karaikal found that mere giving a complaint to the police, would not amount to cruelty and hence, dismissed the petition filed by the petitioner/appellant herein.

7. Aggrieved over the same, the appellant herein has approached this Court by way of filing the present Civil Miscellaneous Appeal.

8. The appellant after filing the above appeal, also filed CMP.No.14243 of 2022, for permitting him to produce documents as additional evidence under Order XLI Rule 27 of the Civil Procedure Code. The appellant in the above CMP has sought to produce the documents namely, the original photographs of the respondent with her deceased lover Murugesan, a copy of the final



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report pending on the file of the learned Judicial Magistrate No.II, Karaikal based on the complaint given by the respondent, a copy of the complaint dated 14.09.2019 given by the appellant's mother against the respondent before the Inspector of Police, Kottucherry Police Station, Karaikal, a copy of the petition filed by the respondent before the learned Judicial Magistrate No.II, Karaikal bearing DVC No.10 of 2019 against the appellant and his parents and a copy of the bank receipts, evidencing the deposits made in favour of the respondent by the appellant.

9. Mrs.A.Vinu Pradha, learned counsel for the respondent did not dispute the documents filed by the appellant except the photographs of the respondent with one Murugesan. Therefore, the petition filed by the appellant showing the subsequent events that have taken place after filing of the divorce petition can be taken as additional evidence and hence, the Civil Miscellaneous Petition filed by the appellant in C.M.P.No.14243 of 2022 stands allowed, in respect of all documents except the photographs.

10. Mr.S.P.Vijayaragavan, learned counsel for the appellant



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submitted that the conduct of the respondent even prior to the filing of the divorce petition constituted mental cruelty. She was in the habit of picking up quarrel with the appellant and his parents and thereafter approaching the police with false complaints. Even in her counter filed in the divorce petition, she had admitted that she approached the police alleging that the appellant did not maintain her properly. Though the respondent had denied her love affair with the said Murugesan, it is the case of the appellant that the respondent was always in a frustrated and depressed mood on account of her affairs with said Murugesan and therefore, did not lead a peaceful matrimonial life with him. The respondent even abused and physically harassed the appellant's mother on several occasions. The conduct of the respondent after filing of the divorce petition has even become worse. She lodged more than three complaints against the appellant and his parents. The complaints were filed one after another, after the closure of the previous complaints. The respondent therefore gave another complaint which ultimately culminated in a final report filed by the Karaikal Police before the learned Judicial Magistrate No.II, Karaikal. In the said case, the



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parents of the appellant were arrested and were in judicial custody for considerable amount of time. The action of the respondent in making a false complaint leading to the arrest of the aged parents of the appellant is a grave conduct which is likely to prevent a peaceful matrimonial life. That apart, the respondent had also lodged a false complaint under the Domestic Violence Act and the same is pending. The appellant's mother also had given a complaint against the respondent, wherein she has stated about the respondent's conduct of threatening her and abusing her in filthy language. The said complaint was lodged on 14.09.2019. The appellant therefore prayed that the respondent's love affair with one Murugesan was suppressed by the respondent and her parents and the subsequent conduct of the respondent in making false allegations of dowry demand and responsible for making the police to arrest their parents are conducts which are 'grave in nature' and are sufficient to grant the decree of divorce.

11. Mrs.A.Vinu Pradha, learned counsel for the respondent, on the other hand submitted that, the allegations in the petition for divorce only showed that the acts are nothing but normal



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incidents in any family. The allegations are flimsy besides being false and in any event, cannot be a ground for granting divorce. The appellant's conduct in abandoning the respondent and the child forced her to approach the police. She had done this only with an intention of finding a solution to lead a life with the appellant. She did not make any false allegations against the appellant. In fact, she has not even responded to the legal notice issued by the appellant only because any averments made in her reply would be construed and mistaken as 'bad conduct' on the part of the respondent. She wanted to save her marital life and therefore, she waited patiently and in fact, in the counter, she expressed her willingness to live with the appellant.

12. We have considered the contentions of the learned counsels on either side and the pleadings, evidences and the documents placed on record before us.

13. Though the respondent had denied her love affair with one Murugesan, she would admitted that Murugesan was fond of her and it was a one-sided love affair. She had produced the



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police records namely, the closure of FIR registered under Section 174 Cr.P.C., on account of the suicide of the said Murugesan. According to the respondent, Murugesan committed suicide because he was having an ailment and as nothing to do with the alleged love affair with the respondent. The submissions of the appellant's counsel, the fact of the respondent's relationship with Murugesan was suppressed and this would cause mental cruelty and preclude any peaceful life between them, cannot be brushed aside. The subsequent conduct of the respondent in filing a complaint before the Karaikal police for the offences under Sections 498(A), 294(b), 506 (ii) r/w.34 IPC against the appellant and his parents, is a grave conduct which will definitely affect the respondent's matrimonial peaceful life. We are not expressing any opinion with regard to the truth or otherwise in the complaint lodged by the respondent. However, we find that due to the said complaint, the parents of the appellant were arrested. The additional documents filed by the appellant establishes the said fact. The incarceration of the appellant's parents would certainly have a long lasting effect and would prevent any attempt to reconcile the appellant and the respondent. Since the police are



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not before us, we do not wish to express anything more than saying that, their action of arresting in matters of this nature, is not only against the law, as repeatedly reiterated by the Hon'ble Apex Court and this Court but has a tendency to break the marriage. That apart, the respondent had also filed domestic violence complaint before the learned Judicial Magistrate No.II, Karaikal and the same is pending. In both these proceedings, the respondent had made allegations which would indicate that the matrimonial bond is beyond repair and now, the marriage has become a fiction. The conduct of the respondent shows the scant regard for the feeling and emotions of the appellant and his parents. Likewise, the allegations in the complaint filed by the respondent also shows that the appellant also, according to her, has scant regard for her emotions.

14. The law relating to mental cruelty has been stated in a catena of judgments. The Hon'ble Apex Court has held that any conduct of one party of the marriage unmindful of the consequences on the other party of the marriage, is likely to cause 'mental cruelty'. The Hon'ble Apex Court has reiterated on several



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occasions the numerical counts of incidents is not the relevant criteria. Even a single incident, if it is grave is likely to affect the physical and mental health on the other party to the marriage. In this regard, we rely upon the decision of the Hon'ble Supreme Court in the case of **Samar Ghosh Vs. Jaya Ghosh** reported in **2007 (4) SCC 511**. The relevant portion of the judgment reads 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



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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



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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 sterilization without medical reasons and without the consent or knowledge of his wife and similarly if the wife undergoes



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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 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."

15. Also, we would like to refer to the judgment of the Hon'ble Apex Court in the case of **Vinita Saxena Vs. Pankaj Pandi** reported in **2006 (3) SCC 378**, wherein it has been held as



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follows:-

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"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 complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on



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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:



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"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



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



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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



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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 man and woman before it. The ideal couple or a near-ideal one will probably



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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. Applying the above principles laid down by the Hon'ble Apex Court to the facts of the present case in hand, we are convinced that the conduct of the respondent in filing the complaints against the appellant and his parents after filing of the divorce petition by the appellant, is likely to affect the mind of the appellant and prevent peaceful matrimonial life between them. This definitely is bound to cause deep anguish in the mind of the appellant. The respondent admittedly had filed three complaints which were closed and in the fourth complaint, allegations of dowry demand was made. It is in that complaint, the parents of the appellant were arrested. We are unable to understand as to how the appellant can accept the respondent in such circumstances. If divorce is refused, the marriage would exist



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only on paper and thus, would cause more harm to the parties. The matrimonial bond is beyond repair. Admittedly, the appellant and the respondent are living separately since 2017. Therefore, we are of the view that the appellant has established the act of 'mental cruelty' and the marriage between the appellant and the respondent deserves to be dissolved on the ground of 'cruelty'.

17. In view of the above materials, the order passed by the learned Judge, Family Court, Karaikal in H.M.O.P.No.26 of 2018 dated 30.03.2021, is hereby set aside and the said H.M.O.P. filed by the petitioner/appellant herein stands allowed. Consequently, the marriage solemnized between the appellant and the respondent herein, is dissolved.

18. For all the foregoing reasons, the Civil Miscellaneous Appeal is allowed. Connected Miscellaneous Petition i.e., C.M.P.No.14243 of 2022 also stands allowed. There shall be no order as to costs.

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



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Index:Yes/No

Order:Speaking/Non Speaking

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To

The Judge,
Family Court,
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DP

JUDGMENT MADE IN

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