



C.M.A.No.3294 of 2017

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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 Judgment and decree passed in H.M.O.P.No.1427 of 2015 dated 19.07.2017 by the Learned Principal Judge, Family Court, Coimbatore granting divorce.

2.The brief averments in the Petition filed for divorce are as follows:

a. The Respondent married the Appellant on 05.07.2012. Soon after they set up their matrimonial home, the appellant and the respondent developed some sort of incompatibility as the appellant was in the habit of insulting the parents of the appellant. The Appellant always made false allegations against the respondent's mother. Once when they came to visit the Respondent from Kanchipuram, the appellant pressurised him to send the respondent's parents back to Kanchipuram stating that she did not like them. She threatened to commit suicide if he did not send them away. The appellant made repeated threats of suicide for trivial issues. The appellant always give psychological threat saying that as long as his mother is there she cannot become pregnant and always used to fight with the respondent's mother. She



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would pick up quarrels almost every night and made the respondent spend sleepless nights. The appellant would doubt the respondent's character and question him unnecessarily; She was in the habit of approaching the police for minor issues; On one occasion, the appellant's relative who was a police officer under the guise of mediation insulted the respondent and his parents. The respondent stated that the mental cruelty suffered by him was not a normal wear and tear of family life and sought for granting a decree of divorce.

b. The Appellant herein filed a counter stating that the allegations made in the divorce petition are false and imaginary. The Respondent is a director in TV serial and every day he would go for duty in the morning and come back home late at night hours and hence, they hardly spent time together. The allegations of cruelty is baseless. She never insulted the respondent's parents; The parents of the respondent had stayed with them only for two days and the allegation that she had pressurised him to send them back to kanchipuram is false. The respondent is the only earning member of the family and the mother of the respondent is trying to control her son and often instigated him



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and made allegations against the appellant. It is further stated that the respondent and his parents sent her back to her parent's house and never attempted either to contact over her phone or any other mode for reunion. The Respondent has not made out any ground for divorce. The allegations are trivial in nature besides being false. Hence, she was not willing for dissolution of marriage and wanted to restore the matrimonial life with the respondent and prayed that the Petition for divorce may be dismissed.

3.Before the Family Court, the Appellant examined herself as RW1 and marked two documents viz., Ex.R.1 and Ex.R.2. The Respondent examined himself as PW1 and one Jayapaul as PW2 and marked two exhibits viz., Ex.P.1 and Ex.P.2. The trial Court found that the Appellant by her unnatural and different attitude had caused mental cruelty upon the Respondent and granted the decree of divorce as prayed for.

4.Aggrieved by the order of the Learned Principal Judge, the Appellant has filed the above Appeal.



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5(i).The learned Counsel for the Appellant submitted that the Family Court had erroneously granted the decree of divorce based on certain allegations which would only be trivial and common in any marriage. The allegations would at best be the quarrels which are normal wear and tear in any marriage life. The Family Court ought to have seen that the Respondent had issued divorce notice three days after he left the appellant in her parent's home saying that he had to go out for shooting. Within a couple of days after issuing notice, the Respondent preferred a divorce petition. The Family Court ought to have taken into account this conduct of the respondent, while appreciating the petition for divorce. The respondent did not take any effort towards preserving the marriage. The Petition was filed within one year from the date of marriage. All these would go to show that the Respondent had not given time for the parties to settle and no opportunity was given to the appellant to explain her stand. The allegations primarily was that the respondent's parents were ill treated on several occasions. The allegations also referred to certain conversations in which the Appellant had mentioned about her hatred for the respondent's mother. The Learned Counsel therefore, submitted that the grounds raised by the respondent are not grave enough,



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are trivial in nature and common in any marriage. The fact that the Appellant ill treated / abused the respondent's parents and asked for a separate matrimonial home even assuming to be true, cannot be a ground for grant of divorce. The Family Court ought not to have granted decree of divorce on the basis of the petition filed by the respondent. Isolated incidents which are not grave enough cannot be the basis for holding that they were acts of cruelty and hence, prayed for dismissal of the appeal.

5 (ii).The learned Counsel relied upon the Judgments of the Hon'ble Apex Court in ***“Suman Singh Vs. Sanjay Singh”*** reported in ***“(2017) 4 SCC 85”***, in support of his submission that isolated incidents of long past found to have been condoned due to compromising behaviour of the parties cannot constitute mental cruelty; ***“Gurbux Singh Vs. Harminder Kaur”*** reported in ***“(2010) 14 SCC 301”*** in support of his submission that marriage cannot be dissolved merely because the respondent had made certain averments and pointed out instances where the respondent's parents were abused or insulted by the appellant; ***“J.L.Nanda Vs.Smt.Veena Nanda”*** reported in ***“1998 (Supp) SCC 112”*** in support of his submission that merely because the



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appellant forced the respondent to live away from his parents, decree of divorce cannot be granted.

6.The Learned Counsel for the respondent on the other hand submitted that the appellant and the respondent are living separately since 2013. It is not the numerical count of the incidents that is relevant to find out whether a particular conduct is an act of cruelty. It is the impact of certain incidents which will have prolonged psychological effect in the mind of one party to the marriage on account of the other party's conduct which is relevant. In the instant case, the Respondent had alleged several incidents wherein the appellant had not only insulted the parents of the respondent but made the respondent to distance himself from his parents. Every act of the appellant created a fear in his mind and she was in the habit of imposing her own ideas and thoughts on the respondent. If the respondent did not yield to her, she would make suicide threats which put enormous pressure on the respondent. On several occasions, the respondent has to spend sleepless nights on account



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of the appellant's threats and tantrums; that he is a director of film and television serials and because of the attitude and conduct of the appellant, he was unable to carry out his work peacefully. The appellant was in the habit of doubting the respondent's character. She would smell the respondent's shirt and would often question him by saying that he smelt of a perfume which he had not used and thereby suggesting that he was with another lady. The appellant was in the habit of approaching the police for small incidents. One of the appellant's relative was a police officer and he had mediated and during the mediation, he insulted the respondent and his parents. The said police officer also used to threaten the respondent of dire consequences, if he did not live with the appellant. The learned Counsel therefore, submitted that all these incidents are grave enough to constitute cruelty. In any event, the allegations against each other are such that it would prevent a peaceful matrimonial life and sought for allowing the appeal. The learned counsel for the respondent relied upon the following Judgments in support of his contentions; (i) Judgment of this Court in **"M.Laxman Vs. L.Annapurani"** dated 05.06.2018 in C.M.A.Nos.522 & 523 of 2009 and M.P.No.1 of 2009 and Caveat No.388 of 2009,(ii)" Judgment of this Court in **"R.Thangamani**



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@ **Mainavathy Vs.S.Sathishkumar**”dated 22.09.2017 in C.M.A.No.44 of

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2017, (iii) Judgment of the Hon'ble Apex Court in “ **Naveen Kohli v. Neelu**

Kohli” reported in **CDJ 2006 SC 246** (iv)Judgment of the Delhi High Court

in “**Kusum Vs.Gurcharan Singh**” dated 15.11.2018 in

Mat.App.(F.C.)168/2016 & C.M.Appl.42232 of 2016, (v)Judgment of the

Hon'ble Apex Court in”**Sukhendu Das Vs.Rita Mukherjee**” dated

09.10.2017 in Civil Appeal No.7186 of 2016, (vi)Judgment of the Hon'ble

Apex Court in “**Narendra Vs.K.Meena**” dated 06.10.2016 reported in **CDJ**

2016 SC 922 in Civil Appeal No.3253 of 2008, (vii)Judgment of the Hon'ble

Apex Court in “**Pankaj Mahajam Vs. Dimple @ Kajal**” reported in **CDJ**

2011 SC 1062 dated 30.09.2011 in Civil Appeal No.8402 of 2011 and

submitted that repeated threats to commit suicide amounts to cruelty; when

there is a long and continuous separation, it has to be presumed that the

matrimonial bond is broken; and when the conduct of the parties establish

that the marriage is dead, the marriage can be dissolved.

7.Heard the Learned Counsel on either sides and perused the pleadings, evidence and documents on record.



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8.Point for consideration:

Whether the decree of divorce granted by the Family Court is in accordance with law?

9.Admittedly, the marriage between the appellant and the respondent took place on 05.07.2012. They lived together till 20.07.2013. The divorce petition was filed on 25.07.2013. During the time they were together, it appears that differences arose between them and mediation was held and on the advise of elders, they continued to live with the differences. The primary allegation of the respondent appears to be that ever since the date of marriage, the appellant and the respondent did not have a normal marital life. The appellant was in the habit of picking up quarrels during the nights after the respondent returned from his work, on some pretext or the other. Even on the date of marriage, the appellant had made certain allegations against the respondent's parents, especially his mother which, created a deep scar in the mind of the respondent. On one occasion, when the respondent's parents came to visit the appellant and the respondent, they were sent away after the



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appellant picked up a fight with them. The respondent was forced to send them early in the morning and this had caused tremendous pain and agony to him. The appellant made repeated threats to commit suicide. However, it is the case of the appellant that the respondent was acting at the instance of his parents and there was no serious misunderstanding between her and the respondent. Even in the counter filed before the Family Court, she had accused the respondent's parents. She had stated that they would feel inferior and did not allow the appellant to get close to the respondent fearing that she would separate him from them. Thus, we find that there are allegations and counter allegations against the appellant and the respondent accusing each other. The appellant during her cross examination admitted certain facts which have been stated by the respondent in the petition for divorce. She admitted that on one occasion she did not allow the respondent to sleep as she picked up a fight at night and that only in the early morning, she became alright. She also admitted that she questioned the respondent on one occasion since he smelt of a perfume which he had never used. The other admission made by the appellant was that during the mediation held between them which was conducted by the appellant's relative who was police officer, the



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respondent and his parents were insulted and humiliated by him.

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10.The facts narrated above, would show that on the over all consideration of the allegations and counter allegations and the evidence on record, it would not be in the interest of justice to direct the parties to live together. The respondent cannot be compelled to put up with the conduct of the appellant that he had alleged and continue to live with her. The Courts have repeatedly held that there cannot be any straight jacket formula to define mental cruelty. It is the feeling of anger, disappointment and frustration any spouse suffers due to the conduct of the other spouse that is relevant to consider if there was mental cruelty. The appellant's admission in counter that the respondent's parents attempted to separate the respondent and the appellant, would establish that the appellant was not happy with the respondent's parents. That would also show that the respondent's version in the petition for divorce his parents were insulted and humiliated by the appellant is probable. It would be useful to refer to 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-



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 matrimonial bond is beyond repair. The marriage



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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 Hon'ble Apex Court in “**Vinita Saxena vs. Pankaj**

Pandi reported in (2006) 3 SCC 378” 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



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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 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



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



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12.In “ **Naveen Kohli v. Neelu Kohli** reported in “**(2006) 4 SCC 558**”
the Hon'ble Apex Court held as follows:

“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.”

13.The Judgments cited by the appellant and the respondent have been



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rendered on the facts and circumstances of that particular case. The principles laid down in those Judgments are not in conflict with the principles laid down in the Judgments referred above. It is settled position of law that mental cruelty cannot be construed in a straight jacket formula and has to be seen in the light of the facts and circumstances of each case. The facts and circumstances of each case are different. Applying the above said legal principles to the instant case, we find that the Appellant and the respondent have been living separately since 2013 and the marriage is existing only on paper and it is beyond repair. The allegations and counter allegations that we have enumerated above would show that the marriage is unworkable and there is no possibility of the parties leading a meaningful and peaceful matrimonial life. In such circumstances, if this Court does not confirm the decree of divorce already granted, it would cause enormous hardship to the parties. This itself would cause mental cruelty as observed by the above cited Judgments of the Hon'ble Apex Court. For the above reasons, we have no hesitation in confirming the Order of the Family Court granting decree of divorce on the petition filed by the respondent.



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14.In nut shell,

WEB COPY (i)The appeal is dismissed confirming the decree of divorce passed in H.M.O.P.No.1427 of 2015 dated 19.07.2017 on the file of the Family Court, Coimbatore.

(ii)The original petition in H.M.O.P.No.1427 of 2015 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.)

30.11.2022

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Index : Yes / No

To

1.The Family Court,
Coimbatore.

2.The Section Officer
V.R Section
Madras High Court.

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

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**C.M.A.No.3294 of 2017
and
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30.11.2022