



C.M.A.(MD)No.895 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 11.11.2022

Delivered On : 23.12.2022

CORAM

**THE HONOURABLE MRS. JUSTICE R. THARANI**

C.M.A.(MD)No.895 of 2016

and

C.M.P(MD)No.12103 of 2019

Subaselva Chithra

.. Appellant /Respondent

Vs.

J.Jerald Dominic Arockiaraj @ Prabhu

.. Respondent / Petitioner

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 55 of the Indian Divorce Act, against the fair order and decreetal order, dated 28.04.2016, in I.D.O.P. No.135 of 2015, on the file of the I Additional District Judge, Tirunelveli.

For Appellant : Mr. F.X.Eugene

For Respondent : Mr.R.Balakrishnan

### **JUDGMENT**

This Civil Miscellaneous Appeal has been filed against the order, dated 28.04.2016, in I.D.O.P. No.135 of 2015, on the file of the I Additional District



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Judge, Tirunelveli. The appellant herein is the respondent and the respondent herein is the petitioner in the main original petition.

2. A brief substance of the petition filed by the husband(petitioner), in I.D.O.P. No.135 of 2015, is as follows:

2.1. The marriage of the petitioner and the respondent took place on 28.05.2009 at Cheranmahadevi, following Christian Religious Rites. After the marriage, the petitioner and the respondent were residing at Virugambakkam, Chennai. From the date of marriage, the respondent-wife used to quarrel with the petitioner and his parents. She is egoistic, she never had done any house hold works and cooking. The respondent went to her parent's house for delivery, at that time, she took away all her jewels and dress materials. On 04.04.2010, a male child was born to them. Though the petitioner tried his level best, the respondent was not willing to live with him. The petitioner rented a separate house, even then, the respondent refused to live with him. When the petitioner went to see the child, the respondent and her parents scolded him. On 04.09.2010, the respondent came to the house of the petitioner and took away the marriage album, educational certificates, a chain, bracelet and rings. On 04.11.2010, the respondent scolded the father of the petitioner in filthy language over phone. On 21.02.2011, the relatives of the petitioner went to the house of the respondent for compromise, the family members



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of the respondent scolded them. The petitioner sent a notice on 28.02.2011, the respondent sent a reply on 20.03.2011. With a motive that the petitioner and the respondent can live together as a separate family, the parents of the petitioner went to the native place. Subsequently, the respondent came to the house of the petitioner. But, even afterwards the respondent used to go to her parent's house often. On 04.02.2012, at about 6.00 pm., without any reasonable cause, the respondent came to the office of the petitioner and slapped him in front of his co-workers. This amounts to mental and physical cruelty.

2.2. The father of the respondent is a retired head constable. On 11.05.2015, when the petitioner went to the house of the parents of the respondent to meet her, the father of the respondent slapped the petitioner. A complaint was lodged on 11.05.2012 and the petition was later closed on compromise. On 18.05.2012, the respondent filed a dowry case against the petitioner. Though the parent's of the petitioner were residing in USA, a false complaint was foisted against them. The petitioner was arrested on 26.05.2012 and he was kept in custody for 5 days. Particularly, on the date of anniversary that is on 28.05.2012.

2.3. The respondent lodged a maintenance case in M.C.No.36 of 2012, before the Judicial Magistrate, Tambaram. The respondent filed another complaint



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against the petitioner and his parents and the same was registered in Crime No.34 of 2019 on the file of the all women police station, Tambaram, under Sections 498(A), 406, 294(b) I.P.C and Section 4 of the Dowry Harassment Act and the same was taken on file as C.C.No.110 of 2013 before the Judicial Magistrate, Tambaram, which is pending. There is no possibility for the petitioner to live with the respondent. The respondent has committed mental and physical cruelty.

3. A brief substance of the counter filed by the wife (respondent), in I.D.O.P. No.135 of 2015, is as follows:

3.1.The petitioner married the respondent on 30.5.2009, without intimating the parents of the respondent. The respondent is always willing to live with the petitioner. The petitioner and the respondent lived together for three months. Then, the petitioner snatched away the salary of the respondent. He insisted the respondent to pay a sum of Rs.50,000/- for constructing a house in Pammal, again, the petitioner insisted the respondent to sell her jewels to get Rs.5,00,000/- for the construction of the house. The respondent refused to sell the jewels and promised the petitioner to obtain a loan in her office. From that day onwards, the petitioner and his parents abused the respondent and attacked her. They snatched away some of her jewels.



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3.2. On 19.11.2009, at about 10.30 pm., the parents of the petitioner demanded her ATM card. During February-2010, the respondent went to her parental house for delivery. A male child was born on 04.04.2010, even after the birth of the child, the petitioner has not taken any steps to live with the respondent. He demanded Rs.5,00,000/- as Dowry. After a talk of compromise, during July-2010, the respondent, her parents and her brother, sister taken a house in Chennai, at that time, the petitioner came to the house of the respondent with three rowdy elements and threatened her. On 04.09.2010, the petitioner abducted the respondent. It is wrong to state that on 04.11.2020, the respondent scolded the father of the petitioner. The petitioner has no interest even to see his son. After a talk of compromise, the petitioner and the respondent lived together in Anakaputhur with his parents, at that time, the petitioner and his parents used to assault the respondent and demanded jewels. On 06.05.2012, the petitioner demanded dowry from the father of the respondent. The petitioner attacked his father-in-law and gave a false complaint before the Mangadu police station. The respondent lodged a complaint on 17.05.2012, wherein, she has demanded the petitioner to live with her. There is no motive to keep the petitioner in custody on the date of anniversary.

4. 2 witnesses were examined and 4 documents were marked on the side of the petitioner. 3 witnesses were examined and 2 documents were marked on the



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side of the respondent. The trial Court dissolved the marriage by allowing the divorce petition.

5. Against the order, the wife has preferred this Appeal, on the following grounds:-

The trial Court erroneously allowed the divorce petition, without any valid or acceptable reasons. The trial Court wrongly come to the decision that there was cruelty on the part of the appellant. The trial Court failed to consider that the petition given by the appellant under the Dowry Prohibition Act is necessary to protect the life of the appellant from the harassment of the husband and his parents. The trial Court failed to consider that the appellant filed a police complaint, against the respondent and his parents, to safeguard her life, without any intention to commit cruelty to the respondent or his family members. The trial Court failed to consider that the dowry harassment had taken place from the date of marriage and not only during the time, when the mother-in-law was in the foreign country. The trial Court failed to take any steps to mediate the case between the parties. The trial Court straight away passed the judgment and granted a divorce decree and the decree is to be set aside.



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6. On the side of the appellant, it is stated that after the wife delivered male child, the husband has not taken any steps to take her back to the matrimonial home. The husband demanded the ATM card and he demanded Rs.5,00,000/- as dowry. It is wrong to state that father of the appellant assaulted the respondent-husband, even after a lapse of 3 years, the husband was not ready for re-union and he filed the divorce petition in Tambaram and the same was transferred to Tirunelveli.

7. On the side of the appellant-wife, it is stated that the trial Court failed to consider that when the husband was about to assault the wife, when the husband was not taking steps to bring back the wife to the matrimonial home, after delivery, to safe guard herself, she has to lodge a complaint. Since the wife was unable to live with the husband under the same roof, she filed a complaint and the criminal case is pending. Without considering this situation, the trial Court has come to a conclusion that the wife committed cruelty. Only when the respondent manhandled his aged father-in-law and his wife due to fear of live, they filed a police complaint, giving a police complaint will not amount to cruelty and that the circumstance for filing the complaint has to be taken into account.



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8. On the side of the respondent - husband, it is stated that there was no demand of dowry from the date of marriage itself. It was the appellant who was not ready for peaceful matrimonial life. During July-2010, they moved to Chennai and stayed at Muhalivakkam and that the appellant was creating problems to the husband, on 04.09.2010, the appellant came to the house of the respondent and took away all her belongings. On 21.02.2011, there was a compromise talk among the elders of the family. The appellant's father refused to send his daughter to the matrimonial home. On 28.02.2011, the husband sent a legal notice and on 20.03.2011, the wife sent a reply notice, subsequently, they lived together from 04.02.2012 in a separate house. The parents of the husband were not living with them. The wife slapped the husband in front of his colleagues. When the respondent unable to bear the harassment of the appellant and her father, the respondent filed a case in U.S.R. No.128/T14PS/12. Only as a revenge, the wife and the father-in-law filed a petition on 18.05.2012, as if the husband demanded Rs.5,00,000/- as dowry and he demanded her ATM card. The father of the appellant being a retired Head constable by using his influence, he got the case registered and he arrested the respondent and kept him in custody for 5 days. At the time of lodging a complaint against the respondent and his mother, the mother of the respondent was not at all in India, even then, the appellant impleaded her in the Domestic violence case. The wife has deposed that she was not aware that the mother-in-law was Abroad at the



time of lodging the complaint. Filing a false case against the husband and the in-laws amount to cruelty. A judgment of this Court reported in CDJ-2020-MHC-3866 (Vivek Thambuswamy and another V. Maria @ Sijio Paul) is cited, wherein, it is stated as follows:-

34. ... *Therefore, we conclude that the criminal proceedings initiated by the respondent-wife as against the parents of the appellant-husband, are clearly an after-thought. When such an action has been resorted to by the respondent to prosecute the parents of the appellant, it only enlarges the differences between the couple. In such circumstances, no prudent husband would ever be inclined to live with the wife, when his parents are prosecuted without any justifiable reason. This attitude of the respondent-wife in preferring criminal complaint against the appellant-husband and his parents, definitely amounts to cruelty and on that ground, the appellant-husband is entitled to a decree of divorce. The respondent-wife, by her own conduct, had enlarged the scope of the matrimonial litigation and thereby subjected the appellant-husband to cruel treatment.*

9. The marriage invitation was marked as Ex.P1. Marriage photos were marked as Ex.P2. Marriage Certificate was marked as Ex.P3. Photographs and C.Ds were marked as Ex.R1 and R2. The marriage and the birth of male child were admitted by both the sides. It is seen that the respondent-husband filed a complaint against the father of the appellant and as a retaliation, the wife filed a complaint



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against the husband and mother-in-law, under the Dowry Prohibition Act. The allegation against the husband is that he demanded Rs.5,00,000/- as dowry and demanded the jewels of the appellant, and he also demanded the ATM card of the appellant. On the side of the appellant, it is stated that the criminal case was lodged against the husband, only to protect the life of the appellant and the same cannot be taken as a cruelty.

10. On the side of the appellant, it is stated that the wife made some allegation against the mother-in-law, but, at the particular time, the mother-in-law was Aborad and she was not in India. The allegation against the wife by the husband is that she used to abuse him and that she slapped him in front of his colleagues and the father-in-law assaulted the respondent. On the complaint lodged by the wife, the husband was detained in custody for 5 days.

11. It is seen that the complaint lodged by the husband against the father-in-law in C.S.R.No.128/T14PS/12 was closed, after an advise to go for a compromise. It is seen that both parties have not mentioned whether the criminal case was pending or disposed of. In view of the same, this Court is not inclined to go into the facts of the criminal case.



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12. The allegation that the wife slapped the husband in front of co-worker was not denied by the wife. Admittedly, there is a criminal case lodged by the wife and the husband was detained in judicial custody for 5 days. Considering the evidence and considering the allegations put forth by both the parties, it is decided that the action of the appellant amounts to cruelty and order of the trial Court is to be confirmed.

13. For the above reasons, this Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

**23.12.2022**

Index : Yes/No  
Internet : Yes/No  
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**R. THARANI, J.**

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To

- 1.The I Additional District Judge,  
Tirunelveli.
- 2.The Section Officer,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.

Pre-delivery Judgment made in  
C.M.A.(MD)No.895 of 2016

**23.12.2022**