



CMA Nos.1001 and 1004 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2023

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

Civil Miscellaneous Appeal Nos. 1001 and 1004 of 2019
and
CMP. Nos.2805 and 2813 of 2019

T.S.Ramesh

.. Appellant in
both the appeals

Versus

V. Krithika

.. Respondent in
both the appeals

Appeals filed under Section 19 of the Family Courts Act against the fair and decretal order dated 26.11.2018 passed by the Principal Family Court at Chennai, in O.P. Nos. 2674 of 2012 and 3106 of 2012 respectively.

For Appellant : Mr. K.P. Gopalakrishnan
in both the appeals

For Respondent : Mrs. Rita Chandrasekar
for M/s. Aiyar & Dolia
in both the appeals

COMMON JUDGMENT



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R. MAHADEVAN, J.

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Both these appeals are filed by the appellant/husband, questioning the correctness and validity of the common order dated 26.11.2018 passed by the Principal Family Court, Chennai in O.P. Nos. 2674 and 3106 of 2012.

2. Before the Family Court, the respondent/wife filed O.P. No. 2674 of 2012 under Section 13 (1) (ia) of the Hindu Marriage Act, 1955 (hereinafter shortly referred to as 'the Act') praying to dissolve the marriage solemnised between her and the appellant herein on 27.08.1997 on the ground of cruelty. Whereas, the appellant/husband filed O.P. No. 3106 of 2012 for restitution of conjugal rights. By a common order dated 26.11.2018, the Family Court allowed the Original Petition filed by the respondent and thereby dissolved the marriage solemnised between the parties on 27.08.1997. Consequently, the Original Petition filed by the appellant for restitution of conjugal rights was dismissed. This has given rise to the filing of these two appeals by the appellant/husband.

3. For effective adjudication of the issue involved herein, it is but necessary to brief the averments made in original petitions filed before the Family Court, which are as follows:

OP. No. 2674 of 2012



4. (i) The marriage between the appellant and the respondent

was solemnised on 27.08.1997 at Vijayashree Mahal, Third Avenue, Anna Nagar, Chennai - 600 040. According to the respondent, after the marriage, she resided along with the appellant and his parents. The appellant is always short-tempered and used to abuse the respondent for trivial and flimsy reasons. The appellant, claiming himself to be a forthright person, had always been ruthless in his comments and insensitive in his behavioural pattern towards the respondent. Even during the initial days of the marriage, he did not spend quality time with the respondent and he did not understand her likes and dislikes. Rather, the respondent was made to do all household chores in a joint family consisting of his parents-in-law, sister-in-law and brother-in-law without providing her the basic comfort. Even though the parents of the respondent have made all arrangements for the marriage befitting their financial status, it was criticised by her in-laws often and thereby she was subjected to acute mental pain and sorrow. The parents-in-law of the respondent have also demanded more material goods and jewels soon after the marriage and it has come as a rude shock to the respondent. Whenever the appellant abused the respondent, the parents-in-law used to encourage the appellant to continue to abuse her without coming to her aid. Further, the appellant used to be on his own world of newspaper, television or with his



friends on the phone and the rest of the time was spent on finding fault on the respondent.

(ii) The respondent further stated that after the marriage, whenever she visited her parents' house along with the appellant, their parents have given a royal treatment for the appellant at all times of such visit, however, the appellant used to criticise the parents of the respondent for no reason and he used to call her siblings as deceitful, her relatives as arrogant and her parents as having attitudinal issues, etc. Further, the appellant also directed the respondent to stop having contact with her parents, siblings and relatives stating that they would spoil the reputation of the family of the appellant. By saying so, the respondent was not permitted to attend the incoming phone calls from her relatives. The family members of the appellant pretended as if they maintain their daughter-in-law well, but, in reality, they often interfered with the married life of the respondent with the appellant and thereby ruined it. According to the respondent, there were many occasions where she was driven from the matrimonial home to stay in her parents' house and only after her parents plead with the appellant and his family members, she was taken back. The parents-in-law of the respondent also often criticised her for not able to conceive and forced her to take cruel form of native



treatment to begot a child much to her chagrin.

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(iii) It is also stated by the respondent that she had done Doctorate and the appellant was only a graduate before the marriage. However, the parents of the appellant insulted the appellant by comparing the respondent and stated that he is poor in academics. This has turned the irritation of the appellant towards the respondent and he had taken up chartered accountancy exams every six months, but failed. However, for the failure of the appellant, the respondent was projected as a bad omen and unlucky in the matrimonial home. Consequently, the appellant forcibly stopped the respondent from pursuing her higher education, however, he permitted her to take up part time job and demanded her salary to be deposited in the name of his father, stating that such deposit would fetch 0.5% extra interest as he was a senior citizen. Subsequently, the appellant forced the respondent to take up full time job and even overseas job for both and forced her to attend interviews. But, he portrayed before his parents that the idea to secure overseas employment, was given by the respondent and projected her in bad light. In this context, the parents of the appellant abused the respondent. Notwithstanding the same, the respondent was made to go for employment at the cost of her health. Even though the respondent prepared breakfast, she was not permitted to take food from home and on many occasion, she was made to drink only water, as a



result of which, her health has deteriorated.

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(iv) The respondent further stated that on 06.12.2002, a male child born was born through Caesarean, for which the parents of the appellant blamed the respondent and picked up a quarrel even in the hospital. The male child was named as Bharath Vignesh and the respondent, after delivering the child, stayed in her parents' house only for 45 days. On 45th day of delivering the child, the respondent was asked to come to the matrimonial home without any regard for her deteriorating health. Even during her short stay at her parents' house, the appellant and his parents have unnecessarily picked up quarrel and made her matrimonial life a misery. On one such occasion i.e., on 05.08.2003, the appellant visited the respondent's parents' home and picked up a quarrel with her father; and at the height of the quarrel, he pushed him on the sofa and utter unparliamentary words towards her sister and also attempted to assault the 7 months old child. Unable to bear such harassment, the respondent gave a complaint to D-1 Police Station, Triplicane. However, after the intervention of the elders in the family, the respondent once again rejoined the appellant in the matrimonial home.

(v) After rejoining the matrimonial company of the appellant, he was admitted in the hospital and he underwent a knee surgery. During his hospitalisation, it was the respondent's brother who took personal care



throughout the hospitalisation. After discharge, the appellant was transferred to Coimbatore by his employer, however, without even informing the respondent, he stayed in Coimbatore for a long time and his whereabouts were unknown to her for a few months. The respondent came to know about the transfer of the appellant much later. Thereafter, the appellant joined a banking company in Kuwait and the respondent also joined the appellant in Kuwait along with the minor child. However, the respondent came to know that for the purpose of obtaining family visa, which would increase the appellant's salary by adding HRA and other benefits, he had called upon the respondent and the minor child to join him in Kuwait. Even in Kuwait, the appellant did not spend quality time with her and the minor child; and he forced the respondent to take up a job in Kuwait and made her to attend interviews. Further, during a minor quarrel, the appellant had driven the respondent and the minor child out of the house at Kuwait in the middle of the night. After four weeks of stay, the respondent came back to India and thereafter, the appellant himself wrote a letter admitting his misbehaviour in Kuwait.

(vi) It is also stated by the respondent that during April 2010, the appellant came to Chennai and met the respondent and the minor child. They went out for a short outing, but even during such time, the behaviour of the appellant towards the minor child was indifferent. The appellant informed



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the minor child to look for a new father and wanted the respondent to marry another man. From this incident, the minor child refused to talk to the appellant at all. The appellant also made several attempts to talk to the child, but he could not succeed. However, he blamed the respondent for the minor son's refusal to talk with him. After persuasion and repeated attempts for 10 months, the minor child started conversing with the appellant.

(vii) During July 2011, the appellant shifted his employment from Kuwait to Saudi Arabia. The respondent therefore intended to reach Saudi Arabia to stay with the appellant. However, the visa of the minor son expired. When the respondent enquired about the status of the visa, she was shocked to learn that the appellant submitted a letter to the Regional Passport Officer, Chennai stating that she had suppressed the information about her domicile and was trying to mislead the passport authorities by submitting fake records. The appellant also filed W.P. No. 23961 of 2011 before this Court for a direction to the Regional Passport Officer to renew the passport of the minor, but he withdrew the writ petition. As a result of the same, the respondent could not renew the passport of the minor son. The appellant was never interested in the well being of the minor son at any time, but he filed OP No. 327 of 2012 for interim custody of the minor child as if he is interested in the welfare of the minor child. Thus, according to the respondent, she was subjected to cruelty in



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many forms and manifestations at the instance of the appellant. The minor boy had grown up and he was ten year old, but the respondent has not repented of his acts and deeds. The respondent tolerated all the abuses of the appellant for over 15 years. The parents of the appellant also refused to interfere with the attitude of the appellant. The appellant and the respondent are residing separately since July 2011. It is the respondent, who is taking care of the welfare of the minor son and she is no longer willing to continue the marital relationship with the appellant as no useful purpose will be served in living together. The respondent therefore filed the Original petition for dissolution of marriage.

5. (i) Repudiating the averments in the Original Petition, the appellant filed a counter affidavit, wherein, it is *inter alia* stated that the marriage was an arranged one having been initiated by the parents of both sides. It is further stated that the appellant and the respondent lived happily till 2008 and there was no quarrel between them as alleged. When the appellant went for overseas employment in the year 2008, the respondent also joined him and they led a happy life. According to the appellant, various averments relating to ill-treatment are false and they are not borne out of truth. It is his specific contention that had they been true, the respondent would not have



kept quiet for 15 years to file the present petition. The appellant and his family members never acted for material gains, as alleged by the respondent. The respondent was not subjected to cruel treatment and the various allegations made in that regard are false. The respondent was treated as a lovable daughter-in-law by his parents and she was not prevented from meeting his parents. Further, the allegation that the respondent was chased out of the matrimonial home on many occasion is absolutely false and incorrect.

(ii) It is stated by the appellant that the respondent is a Ph.D., holder in Psychology and she should treat herself for making such bald, false and funny statements. According to the appellant, he and the respondent lived together peacefully and happily till 2009. When the appellant insisted her to join him in Kuwait where he was employed, the respondent has come up with various false versions at the instance of her parents. The parents of the respondent are interested in keeping the married daughters in their house and it is evident from the fact that the respondent's younger sister is made to reside in their house and her husband is expected to visit her only in weekends. The parents of the respondent are not interested in the welfare and well being of their daughters and grandchildren. The father of the respondent is a Doctor and he is assisted by the respondent in running the clinic. At the instigation of her



parents, the respondent has made various false allegations.

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(iii) It is also stated that the respondent has come up with various false averments against the appellant's parents, who have nothing to do with the matrimonial life between him and the respondent. The day to-day affairs in the matrimonial house have been exaggerated and twisted to make it as if the respondent was subjected to cruel treatment by the appellant and his parents. On the other hand, the fact remains that the respondent never looked after the minor child, who was looked after by a servant maid and the same was not relished by the respondent in the interest of the child. The respondent, her mother and others in their family are always in the clinic of the father of the respondent and therefore, they have deserted the minor child with the servant maid. The minor child, in the tender months, was looked after in the most unhygienic condition, which made him to ask the respondent to give preference to the minor child. However, the respondent has come out with certain averments which are contrary to the truth. The parents of the appellant and the appellant, whenever visited the respondent's house, were insulted by words and deeds. The sister of the respondent who permanently stayed in her parents' house, is a lawyer, however, she is a non-practicing advocate. It is the sister of the respondent who virtually threatened the appellant of all his actions and had given a criminal colour. Therefore, the appellant did not like the



interference of the respondent's parents and her sister in his matrimonial life.

However, in order to suppress the aforesaid facts, the respondent had come up with false version. In fact, the appellant was never allowed to freely discuss his desire concerning the matrimonial life.

(iv) The appellant further stated that the alleged incident that had taken place on 05.08.2003, is false. The matrimonial life was peaceful and blissful until the year 2008. The minor child was very affectionate towards the appellant and was all along behaving in a very affectionate manner. The only concern of the appellant is to bring up the only male child in the best way, of course, befitting the status and his income. Any dutiful wife should be happy to live with a person like this appellant, who is a teetotalter, well-educated and honoured by the employers of foreign origin. This could stand testimony to the manner in which the minor son behaves with the appellant. However, the respondent intended to project the appellant very badly and had twisted certain facts with respect to the relationship between the appellant and the minor son. The respondent, by nature, is a very lazy lady and she did not like bright prospects offered by the employer in the employment arranged by him for her.

(v) According to the appellant, during the course of his hospitalisation, he was not assisted by her brother or any one from the family of the respondent. Further, when he was transferred to Coimbatore, the



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appellant requested the respondent to join him, but it was she who refused to accompany him to Coimbatore. The aim of the respondent and her parents is to see that the respondent permanently stays with her parents even after the marriage. The respondent was taken to Kuwait, where she had spent quality time with the appellant. In effect, the real love and affection shown by the appellant was twisted by the respondent.

(vi) It is stated by the appellant that the attitude of the respondent completely changed, which necessitated him to take certain action by writing letter to the Regional passport Officer, Chennai. The minor child, by himself, is not against the appellant, but he was tutored and brain washed by the respondent for the reasons unknown to him. The respondent and her parents, including her sister, are systematically spoiling the life of the minor child by brain washing, tutoring and projecting the appellant as a bad man. The appellant has made several attempts for joining the respondent, but he could not succeed. In any event, the matrimonial life will be happier if the respondent rectifies her misdeeds and joins the appellant, especially when she being a psychology graduate. Stating so, the appellant prayed for dismissal of the Original Petition filed by the respondent for dissolution of the marriage.

OP. No.3106 of 2012



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6. (i) Pending the divorce petition, the appellant preferred the petition under Section 9 of the Act for restitution of conjugal rights, stating that the respondent was depending upon her father's reference even for doing counselling services. Even though this had telling effect in her health to stay in the clinic of her father past 10 pm, she never heeds to the request of the appellant to give up her counselling service. The appellant had great love and affection towards the respondent and he did everything for her welfare and happiness. The family members of the appellant also showered affection towards the respondent. In the matrimonial life between the parties, money was not a problem, because the income of the appellant itself was good and there was no necessity for the respondent to earn money.

(ii) The appellant proceeds to state that during February 2002 when the respondent was confirmed with pregnancy, he requested his employer not to transfer him for some time and to retain him in Chennai so as to take care of the respondent. Further, at the request of the respondent, the appellant assisted the respondent and guided her to find a permanent job in Chennai befitting her qualification and background. That apart, the place of employment of the respondent was at Triplicane, and therefore, the matrimonial home was also shifted to Triplicane to facilitate her to attend her



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employment with ease. When the male child was born, the appellant and family members have performed the baby shower function in a grand manner.

Even when the respondent stayed at her parents' house post-delivery, inspite of completing his work during odd hours, the appellant went and saw the respondent and the minor child and returned home to K.K. Nagar where he stayed by then. Even when he was transferred to Coimbatore, he used to meet the respondent and the minor child once in a week. The appellant also took steps to put the minor son in D.A.V. School at Gopalapuram, Chennai. It is also stated that because of the non-cooperation of the respondent in furnishing her asset details, the appellant left his employment and got another employment in Kuwait. Further, the appellant had taken the respondent to Kuwait twice where they had a good time with the minor son. However, on and from June 2011, for no fault of the appellant, the respondent had cut off all the access to enable him to meet or speak to her. The respondent, for the reasons unknown to him, refused to come back to the matrimonial home. As all his effort to meet the respondent failed, the appellant filed OP No. 327 of 2012 before this Court for custody of the minor child. As a counter-blast, the respondent preferred FCOP No. 2674 of 2012 before the Principal Family Court, Chennai for dissolution of the marriage by making unrealistic allegations. The appellant had taken all efforts to bring back the respondent to



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the matrimonial home, but he failed, therefore, the petition for restitution of conjugal rights.

7. (i) The respondent filed a counter affidavit to the petition for restitution of conjugal rights, stating that from the initial period of marriage, the appellant found fault with the respondent for trivial reasons. Even in the early days of marriage, the appellant did not spend time with the respondent or understand her likes and dislikes. The respondent was driven to her parents' house on several occasion and after the intervention of elders, she joined the matrimonial company of the appellant. The respondent was not extravagant, as portrayed by the appellant and the income received by her was taken away by the appellant and his family. She was forced to apply for a full time job knowing fully well that taking up such work would topple the work life balance, besides it will spoil her health. Whenever the respondent attempted to explain this, the appellant and his parents were upset and angry, as they thought that the respondent did not listen to their words. Above all, the appellant forced the respondent to take up offers in foreign country with an intention that they migrate abroad. The appellant used the respondent as a money making machine and as a short cut to take his career further. The parents of the respondent presented expensive gifts including gold jewellery



during the baby shower ceremony. However, the appellant and his family members interfered with each and every activity of the respondent and did not allow her to live peacefully. During May 2011, the appellant went to Saudi Arabia where he got an employment. He has never taken complete responsibility for the respondent and the minor child. The appellant has been totally insensitive towards her and abused her whenever an opportunity is made available. The appellant went to the extent of withdrawing the passport of the minor child by making false accusations against the respondent that she had applied for passport with fake documents; and thereafter, he applied for custody of the minor child by suppressing all the material information. Above all, the respondent had filed a Petition for Psychological assessment of the child so as to put the child in the boarding school outside Chennai. At this stage, the appellant filed a petition to appoint a third party guardian for the child. The appellant does not have love or affection towards the respondent and the minor child. Thus, according to the respondent, the petition for restitution of conjugal rights, is devoid of any merits and it has been filed as a counter-blast to the petition filed by the respondent for dissolution of marriage.

8. Before the Family Court, common evidence was adduced



in both the petitions. The appellant examined himself as PW1 and marked Exs.

P1 to P54; and the respondent examined herself as RW1 and marked Exs. R1 to R20. On considering the oral and documentary evidence, the Family Court concluded that the respondent was subjected to matrimonial cruelty by the appellant and accordingly, passed the common order dated 26.11.2018, allowing the petition filed by the respondent/wife for dissolution of marriage and dismissed the petition filed by the appellant/husband seeking restitution of conjugal rights. The observation of the Family Court is quoted below for ready reference:

"The cumulative reading of the pleadings and evidence of both sides would give a clear case of proof that the petitioner was subjected to cruelty. The above decision squarely applies to the above case in hand. It is also pertinent to point out that the parties are living separately for more than 8 years. Even now the wife is unable to accept the offer of the husband made during cross examination to join back the matrimonial home. The mismatch of habits and culture of the families has led to this extent of irreparable damage to the matrimony.

Consolidating all the above facts and circumstances, this Court is of the considered view that the petitioner has proved the averments of cruelty and that she is entitled to the relief of divorce as prayed for and at the same time, this Court decides that the respondent is not entitled to the relief of restitution of conjugal rights as prayed for and these points are answered accordingly."

The aforesaid order of the Family Court is under challenge in these appeals at the instance of the appellant / husband.

9. (i) Assailing the order impugned herein, the learned counsel



for the appellant/husband would contend that the entire averments made by the respondent/wife in the Original Petition for dissolution of marriage, are bald, generic and non-specific; and that, she was not subjected to matrimonial cruelty. However, the same were not properly considered by the Family Court, while deciding the original petitions filed by the parties. According to the learned counsel, the matrimonial relationship between the appellant and the respondent was cordial, peaceful and blissful subject to minor tussle which can be witnessed in almost every family.

(ii) The learned counsel for the appellant drew the attention of this court to the cross-examination of the respondent and submitted that the admissions made by her during the cross examination on 23.01.2018, do not establish the averments made by her in the original petition filed for divorce, in the manner known to law. According to the learned counsel, the cross-examination of the respondent would make it abundantly clear that even when the respondent joined the appellant at Kuwait, she lived happily. In fact, the appellant made arrangements to put the child in a School at Kuwait and to get a job for the respondent there, as desired by her. Further, the cross-examination of the respondent would disclose that she herself applied for *bona fide* certificate of the minor child in India so as to enable the appellant to get



admission for the child in the School at Kuwait.

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(iii) The learned counsel for the appellant, by placing reliance on Ex.B42, photograph filed by the respondent, submitted that the relationship among the appellant, respondent and the minor child was cordial and happier. In fact, the respondent in her cross-examination, admitted that the matrimonial life was by and large peaceful and without any quarrel. Referring to Exs. B44 and B45, e-mail communications sent by the respondent to the appellant, the learned counsel submitted that it is nowhere stated by the respondent that the matrimonial life was not happier and it is marred by frequent quarrels. Further, the learned counsel brought to our notice Ex.B8 dated 11.12.2017 and submitted that on various occasions, the appellant as a dutiful husband, deposited a total sum of Rs.4,67,617/- to the respondent through NEFT transfer for the maintenance of the respondent and the minor child and the same was duly received and encashed by the respondent, which fact was also admitted by the respondent in her cross-examination. Thus, according to the learned counsel, the relationship between the parties was cordial throughout and the respondent was not subjected to cruelty at any time.

(iv) As regards the averment of the respondent that the appellant, with an ulterior motive has submitted a representation to the Regional Passport Officer not to extend the Visa in favour of the minor child,



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it is submitted by the counsel for the appellant that the respondent in her cross-examination has admitted that without the knowledge or consent of the appellant, she had taken the minor son out of India to Singapore, Bangkok and Hongkong for vacation. The fact that the respondent did not obtain prior consent of the appellant, who is the father of the minor son, prompted the appellant to submit such a representation to the Regional Passport Officer to ensure that the respondent did not take the minor son to any other Foreign countries. Such a representation was given by the appellant in the best interest of the minor son and not with any other intention. Further, such admissions made by the respondent would also indicate that the appellant has made several efforts and spent money for the respondent and her son to keep the matrimonial tie alive. Thus, the various admissions made by the respondent herself in the cross-examination, have been omitted to be considered by the Family Court. Above all, the appellant filed the petition under Section 9 of the Act, for restitution of conjugal rights, in which, he has categorically asserted that he has abundant love and affection towards the respondent as well as the minor son and he intended to re-join the matrimonial company of the respondent. In such circumstances, the Family Court ought to have dismissed the Original Petition filed by her, by observing that the respondent has come forward with inconsistent plea. Instead of doing the same, the Family Court



has dissolved the marriage solemnised between the parties on the ground of cruelty.

(v) It is the assertive submission of the counsel for the appellant that in the Hindu Marriage Act, the term 'Cruelty' has not been defined in exactitude and it depends upon the facts and circumstances of each case. In the present case, on a cumulative assessment of the pleadings, oral and documentary evidence adduced by the parties, it will be very clear that the averments of cruelty projected by the respondent have not been substantiated at all. In this context, the learned counsel relied on the following decisions:

(a) **Praveen Mehta v. Inderjit Mehta [2002 (5) Supreme Court Cases 706]**, in which, it was observed that cruelty, for the purpose of Section 13 (1) (ia) of the Act is the behaviour by one spouse towards the other which causes reasonable apprehension in the minds of the latter that it is not safe for him or her to continue the matrimonial relationship with the other. Mental cruelty is a state of mind and feeling with one of the spouses due to the behavioural pattern by the other.

(b) **A. Jayachandra v. Aneel Kaur [2005 (2) Law Weekly page 149]** wherein, it was held that to constitute cruelty, the conduct complained of should be grave and weighty so as to come to the conclusion that the respondent cannot be reasonably expected to live with the appellant. It



must be something more serious than ordinary wear and tear of married life.

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(c) **D. Nagappan v. T. Virgin Rani [2009 3 Law Weekly**

708] in which, it was held that the ingredients of cruelty have to be considered on the basis of the pleadings and evidence made available. Multiplications of decisions or citations of the various Courts will not improve the case of either party and it has to be culled out from the evidence already made available.

(d) **Jayakumari v. Balachander [2010 3 Law Weekly Page**

No. 76] wherein, it was observed that mental cruelty cannot be inferred from an isolated instance of misbehaviour and it is not sufficient to hold that one of the parties has been subjected to mental cruelty by the other.

(e) **Manisha Tyagi v. Deepak Kumar [2010 2 Law Weekly**

Page No.223] wherein it was held that to conclude that one of the parties to the marriage has been subjected to matrimonial cruelty, it must be proved that the conduct of one of the spouses is abnormal and below the accepted norm that the other spouse could not reasonably be expected to put up with it. Such conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that it would be harmful or injurious to continue the cohabitation with the other spouse.

(f) **Mrs. P. Manimekalai v. R. Kothandaraman [2010 4**



Law Weekly Page No.485] wherein it was held that cruelty, which is a ground for dissolution of marriage, is defined as wilful and unjustifiable conduct of such character as to cause danger to life, limb or health, bodily or mental or as to give rise to a reasonable apprehension of such a danger that it will be difficult for one spouse to live with the other. Thus, the question of mental cruelty has to be considered in the light of the background, status, education and other environment of the spouses.

(g) **Gurbux Singh v. Harminder Kaur [2010 (14) Supreme Court Cases Page No.301]** in which it was held that a few instances of abuse cannot be inferred to conclude cruelty.

(h) **Vishwanath v. Sau. Sarla Vishwanath Agarwal [2012 (4) Law Weekly Page No.613]** in which it was held that the expression 'cruelty' has an inseparable nexus with human conduct and behaviour. It always depends upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.

(i) **Jayashree v. S. Suresh [2012 (2) Madras Weekly Notes (Civil) Page No.698]** in which it was held that mental cruelty must be of such nature that parties cannot reasonably be expected to live together. Such allegations relating to cruelty cannot be vague, trivial, irritations or quarrel



between spouses which happen in day to day marriage life and it may not amount to cruelty.

(j) **K. Kuppuraj v. M. Rajasulochana [2014 (5) CTC Page**

No.199] wherein it was held that to establish cruelty, threat to commit suicide has to be established. There should be concrete evidence to substantiate the averments and mere one or two stray instances and quarrels between spouses cannot be considered to dissolve the marriage on the ground of for cruelty.

(vi) Above all, the learned counsel for the appellant placed reliance on the Judgment of a Division Bench of this Court dated 30.04.2021 passed in O.S.A. No. 282 of 2017 filed by the appellant herein against the order dated 09.08.2017 passed in OP No. 327 of 2012. In the said Judgment, the Division Bench has categorically held in Para No.47 that the respondent is responsible for keeping the appellant in dark about the decisions taken regarding the child and for taking the child without the knowledge of the appellant to foreign countries and also tonsuring the head of the child without intimation and presence of the appellant at Tirupathi, which certainly violates the rights of the appellant as a father thereby denying his love, affection and care to the child. Further, in Para No.48, the Division Bench held that the respondent is mostly responsible for the proceedings initiated before the



Courts. Thus, the learned counsel would submit that the observations made by the Division Bench in the said decision, would make it abundantly clear that the respondent was the cause for all the matrimonial woes and all the efforts taken by the appellant for a reunion has been futile. While so, the decision of the Family Court in dissolving the marriage solemnised between the appellant and the respondent on the ground of cruelty, cannot be legally sustained.

(vii) In effect, the learned counsel for the appellant submitted that the instances cited by the respondent in the Original Petition are not such that warrant dissolution of the marriage. The attitude and behaviour of the appellant are not so dangerous and hazardous for her to live with him. There was no averment made by the respondent in the Original Petition filed for dissolution of marriage on the ground of cruelty. The Family Court also failed to take note of the averments made by the appellant in the Original Petition filed by him for restitution of conjugal rights. Therefore, the learned counsel ultimately, prayed for allowing both the appeals by setting aside the common order impugned herein.

10. (i) Per contra, the learned counsel for the respondent/wife submitted that the Family Court, on assessment of the entire pleadings, oral and documentary evidence, has rightly held that the respondent was subjected



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to matrimonial cruelty by the appellant. The Family Court also properly considered the fact that the appellant and the respondent are residing separately atleast eight years, when the order was pronounced. Now, the parties are residing separately for more than 11 years and they are accustomed with their way of independent life. The minor child has also attained majority and it is for him to decide to live either with the appellant or the respondent. The respondent had tolerated all the misdeeds of the appellant and his family members for the past 13 long years and it may not be compatible for her to rejoin the matrimonial home. The appellant and the respondent have gone a long way in their respective persona life and there is no possibility to return to the matrimonial home to lead a life together.

(ii) As regards the allegations relating to cruelty, it is submitted by the learned counsel for the respondent that the appellant was always abusive and arrogant towards the respondent. Even when the respondent joined the appellant at Kuwait, she was treated very badly, which forced her to return to India within a short stay of four weeks. The conduct of the appellant was so severe that it was difficult for the respondent to persevere the matrimonial life any longer. It is also submitted that the respondent, along with her son is leading a peaceful life. Therefore, the



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learned counsel submitted that at this stage, interference of this Court to the order passed by the Family Court, is not warranted.

11. We have heard the learned counsel for the parties at length and also perused the materials available on record.

12. At the outset, it is to be pointed out that during the course of hearing of these appeals, the learned counsel for the appellant made a submission that the appellant would be satisfied, if the decree and judgment of the Family Court is confirmed by converting this divorce petition filed under Section 13(1)(i-a) into one of divorce by mutual consent of the parties under Section 13-B, and expunging the allegations and averments pointing to cruelty against the appellant/ husband, but, the appellant has not placed the said request on record by way of an affidavit, petition or memorandum, inspite of being given an opportunity in this regard. Further, the appellant was at liberty to have taken this effort at any time during the pendency of the divorce proceedings before the Family Court. However, the appellant has contested the proceedings seeking divorce, pursued the petition seeking restitution of conjugal rights and also preferred the present appeals challenging the common judgment made in the petitions filed under Section 13(i-a) and Section 9 of the



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Act. In these circumstances, this Court does not deem it appropriate to entertain such an oral request made by the counsel for the appellant without there being anything on record in support of the same. As such, these appeals are being decided on merits, without going into the said request made on the side of the appellant / husband.

13. Admittedly, the marriage between the appellant and the respondent was solemnised on 27.08.1997 and out of the said wedlock, a male child was born to them. Due to matrimonial dispute, the respondent/wife filed O.P. No. 2674 of 2012 for dissolution of marriage. On the other hand, the appellant/husband preferred O.P. No. 3106 of 2012 for restitution of conjugal rights. The appellant examined himself as PW1 and marked documents from P1 to P54; and the respondent examined herself as RW1 and adduced evidence by marking documents R1 to R20. The Family Court has made threadbare analysis of the extensive evidence adduced by the parties and applying the legal principles governing the grant of divorce on the ground of cruelty under Section 13(1)(i-a) of the Act, has granted a decree of divorce to the respondent and consequently, has rejected the plea of restitution of conjugal rights made by the appellant, by the common judgment dated 26.11.2018, which is under challenge in these appeals.

14. This Court has given its anxious consideration to the



above facts and evidence adduced before the Family Court on the questions whether the acts of the appellant amount to cruelty, and also whether there is an irretrievable breakdown of marriage between the parties, and also perused the catena of decisions cited by the appellant. In this regard, the following decisions are also of importance and are extracted hereunder for useful reference.

15. The Hon'ble Apex Court in **K. Srinivas Rao v. D.A.**

Deepa [MANU/SC/0180/2013 : 2013 5 SCC 226] has observed as follows:

"We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the Courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the Court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried up there is hardly any chance of their springing back to life on account of artificial reunion created by the Court's decree."

16. The Hon'ble Supreme Court in **Naveen Kohli v. Neelu**

Kolhi [MANU/SC/1387/2006 : (2006) 4 SCC 558], has held as follows:

"83. Even at this stage, the respondent does not want divorce by mutual consent. From the analysis and evaluation of the entire evidence, it is clear that the respondent has resolved to live in agony only to make life a miserable hell for the appellant as well. This type of adamant and callous attitude, in the context of the facts of this case, leaves no manner of doubt in our minds that the respondent is bent upon treating the appellant with mental cruelty. It is abundantly clear that the



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marriage between the parties had broken down irretrievably and there is no chance of their coming together, or living together again.

84. The High Court ought to have appreciated that there is no acceptable way in which the parties can be compelled to resume life with the consort, nothing is gained by trying to keep the parties tied forever to a marriage that in fact has ceased to exist.

85. Undoubtedly, it is the obligation of the court and all concerned that the marriage status should, as far as possible, as long as possible and whenever possible, be maintained, but when the marriage is totally dead, in that event, nothing is gained by trying to keep the parties tied forever to a marriage which in fact has ceased to exist. In the instant case, there has been total disappearance of emotional substratum in the marriage. The course which has been adopted by the High Court would encourage continuous bickering, perpetual bitterness and may lead to immorality.

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.

88. The High Court ought to have considered that a human problem can be properly resolved by adopting a human approach. In the instant case, not to grant a decree of divorce would be disastrous for the parties. Otherwise, there may be a ray of hope for the parties that after a passage of time (after obtaining a decree of divorce) the parties may psychologically and emotionally settle down and start a new chapter in life."

The aforesaid decisions of the Hon'ble Supreme Court were also applied by



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this Court in **R.Saravanan v. D.Shanmuga Priya** [CMA Nos.114 and 620 of

2022 dated 18.04.2022 : MANU/TN/3012/2022].

17. In **Manisha Tyagi v. Deepak Kumar**, [2010 (2) CTC

214], it has been held by the Hon'ble Supreme Court as follows:

"24. This is no longer the required standard. Now it would be sufficient to show that the conduct of one of the spouses is so abnormal and below the accepted norm that the other spouse could not reasonably be expected to put up with it. The conduct is no longer required to be so atrociously abominable which would cause a reasonable apprehension that it would be harmful or injurious to continue the cohabitation with the other spouse. Therefore to establish cruelty it is not necessary that physical violence should be used. However, continued ill-treatment, cessation of marital intercourse, studied neglect, indifference of one spouse to the other may lead to an inference of cruelty. However in this case even with aforesaid standard both the Trial Court and the Appellate Court had accepted that the conduct of the wife did not amount to cruelty of such a nature to enable the husband to obtain a decree of divorce."

18. In **Jayakumari v. Balachander**, [2010 (3) CTC 785], it

has been held by this court as follows:

"30. The term 'cruelty' consists of unwarranted and unjustifiable conduct on the part of defendant causing other spouse to endure suffering and distress thereby destroying peace of mind and making living with such spouse unbearable, completely destroying real purpose and object of matrimony. It would of course be difficult to define the expression 'cruelty'. There cannot be any hard and fast rule in interpreting the same. As pointed out, the word "cruelty" cannot be put in a strait-jacket of judicial definition. It must be judged on the facts of each case having regard to the surrounding circumstances. Whether one spouse is guilty of cruelty is essentially a question of fact and previously decided cases have little, if any, value. The term 'cruelty' is not defined in the Act. It is to be judged by taking into consideration the status of life, the standard of living, the family background and the society in which the parties are accustomed to move because particular behavior may amount to cruelty in one set of circumstances and may not be so in other set of circumstances."



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19. In **Firoz Khan and another v. Union of India and others, I (2007) DMC 626 (DB)**, it has been held by the Orissa High Court as follows:

"97. Human mind is extremely complex and human behavior is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behavior in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

98. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any strait-jacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances while taking aforementioned factors in consideration."

20. In **U. Sree v. U. Srinivas, [2012 (2) MLJ 833]**, it has been held by this Court as follows:

"88. In short, it would be difficult for the parties to bury the past and to begin a new relationship of Husband and Wife. For the past 15 years both parties have remained separately. During these years, they developed their own life style, remained in isolation and grown in their own thoughts. Marriage tie between the parties has become emotionally dead and the same is beyond repair because of the emotionally dead relationship which is a positive act of oppressive mental cruelty, in our considered opinion. There is no chance for both parties to live together in future. In such a context, the decree of Divorce is the only remedy to be passed, so that the parties may choose their life of their own way, when there has been no scope for their reunion."

21. In **Sivasankaran v. Santhimeenal [(13.09.2021 - SC) :**



MANU/SC/0634/2021], the Hon'ble Supreme Court held as under:

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“4. Insofar as irretrievable breakdown of marriage is concerned, no doubt, it does not exist as a ground of divorce under the Act. The issue has been debated by the Law Commission in its various reports. Breakdown of marriage was incidentally considered by the Law Commission in its 59th report (1974), but the Commission made no specific recommendations in this regard. Thereafter in its 71st report (1978), the Law Commission departed from the fault theory of divorce to recognise situations where a marriage has completely broken down and there is no possibility of reconciliation. Neither party need individually be at fault for such a breakdown of the marriage-it may be the result of prolonged separation, clash of personalities, or incompatibility of the couple. As the Law Commission pithily noted, such marriages are 'merely a shell out of which the substance is gone'. For such situations, the Commission recommended that the law be amended to provide for 'irretrievable breakdown of marriage' as an additional ground of divorce. This recommendation was reiterated by the Law Commission in its 217th Report in 2010, after undertaking a suo moto study of the legal issues involved. So far, the Law Commission's recommendations have not been implemented. In 2010, the government introduced the Marriage Laws (Amendment) Bill, 2010, which inter alia proposed to add irretrievable breakdown of marriage as a new ground for divorce in both the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. After receiving suggestions from relevant stakeholders, the bill was amended and reintroduced as the Marriage Laws (Amendment) Bill, 2013. This bill was never passed.

5. The result is that, in appropriate cases, this Court has granted decrees of divorce exercising its unique jurisdiction Under Article 142 of the Constitution of India, to do complete justice between the parties. Such a course is being followed in varied kinds of cases, for instance where there are inter se allegations between the parties, in order to put a quietus to the matter; the parties withdraw these allegations and by mutual consent, this Court itself grants divorce. There are also cases where the parties accept that there is an irretrievable breakdown of marriage and themselves request for a decree of divorce. One of the more difficult situations is where, in the opinion of the court, there is irretrievable breakdown of marriage but only one of the parties is willing to acknowledge the same and accept divorce on that account, while the other side seeks to oppose it even if it means carrying on with the marriage.

6. The ground which is often taken to oppose such a decree of divorce, apart from the absence of legislative mandate, is that the very



institution of marriage is distinctly understood in different countries. Under the Hindu Law, it is sacramental in character and is supposed to be an eternal union of two people-society at large does not accept divorce, given the heightened importance of marriage as a social institution in India. Or at least, it is far more difficult for women to retain social acceptance after a decree of divorce. This, coupled with the law's failure to guarantee economic and financial security to women in the event of a breakdown of marriage; is stated to be the reason for the legislature's reluctance to introduce irretrievable breakdown as a ground for divorce-even though there may have been a change in social norms over a period of time. Not all persons come from the same social background, and having a uniform legislative enactment is thus, stated to be difficult. It is in these circumstances that this Court has been exercising its jurisdiction, despite such reservations, Under Article 142 of the Constitution of India.

7. A marriage is more than a seemingly simple union between two individuals. As a social institution, all marriages have legal, economic, cultural, and religious ramifications. The norms of a marriage and the varying degrees of legitimacy it may acquire are dictated by factors such as marriage and divorce laws, prevailing social norms, and religious dictates. Functionally, marriages are seen as a site for the propagation of social and cultural capital as they help in identifying kinship ties, regulating sexual behaviour, and consolidating property and social prestige. Families are arranged on the idea of a mutual expectation of support and amity which is meant to be experienced and acknowledged amongst its members. Once this amity breaks apart, the results can be highly devastating and stigmatizing. The primary effects of such breakdown are felt especially by women, who may find it hard to guarantee the same degree of social adjustment and support that they enjoyed while they were married.”

Thus, the principles that emerge from the above judgments are that the term 'cruelty' cannot be put in a strait-jacket of judicial definition and it must be judged on the facts of each case, having regard to the surrounding circumstances; and that, a marriage, which is dead for all purposes, cannot be revived by the court's verdict, if the parties are not willing.



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22. In the instant case, it could be seen from the evidence adduced before the Family Court that the respondent has pointed out several instances of abuse, domination, hurtful comments and actions including some instances of harsh and violent behaviour on the part of the appellant towards her and her son. The instances cited by the respondent, more particularly, the representation made by the appellant to the Regional Passport Office, requesting not to extend Visa to their son, and the long term impact that had on the marital bond between the parties, have shattered the matrimonial relationship and the same would not be branded as mere wear and tear in ordinary marital life. Therefore, the Family Court held that every circumstances and incidents in the day to-day affairs of family life cannot be proved with extensive documentary evidence as the nature of the marital relationship being what it is and it is not possible to do so. Accordingly, it was further held by the Family Court that the verbal and psychological abuse along with the dominant and arrogant attitude of the appellant towards his wife, had virtually broken the marital bond.

23. It is a common knowledge that no person will take an extreme decision of separation and divorce at the happening of every incident.



It is only when these instances happen in a continuum that the damage caused to the marital relationship between the parties becomes apparent, especially after the relationship reaches a breaking point. Even if it is assumed that the respondent is deemed to have condoned the improper acts, when she re-joined the appellant at Kuwait, once such instances started again and the relationship between the parties became worse than before, it cannot be said that there was any condonation of the acts of cruelty so as to prevent the respondent to take the stand that divorce is to be granted on the ground of cruelty. Hence, the Family Court held that the series of instances that have been perpetrated by the appellant, though were initially endured by the respondent, cannot be said to have been condoned by her.

24. As has been held by the Family Court, the emails sent by the respondent carry a more affectionate and personal touch and tenor, while those of the appellant to the respondent can be said to be coldly precise to the point and most impersonal. The subsequent conduct of the parties including when the respondent visited Kuwait, point to a yawning gap of differences between the parties that could not be filled up ever again and the appellant has not been able to prove either by pleadings or by evidence at any point of time during the proceedings or before this Court on his claim that there has been



good relationship between the parties. All evidence point otherwise, and the appellant himself does not dispute these emails. Therefore, the email correspondences of the appellant to the respondent also belie the contention made by the appellant that he has been very loving and affectionate towards the respondent.

25. The Family court has also pointed out that the appellant has not financially supported the respondent or their son for almost ten years starting from 2011. Though the appellant has averred that he has been consistently depositing amounts in a bank account for his son, the fact remains that the respondent has no knowledge or access to the bank account and has not been able to use the funds for the welfare of their son. When it is a fact that their son has been in the care and custody of the respondent / wife, the appellant/ husband ought to have financially helped the respondent by giving her access to the account for use of the money that he has been depositing for their son, if the appellant wants to prove that he has been indeed making financial provision for their son. Thus, the appellant failed to discharge his duties as a dutiful husband to the respondent and as a father to their son.

26. Concededly, the parties have been living apart from a long period of time and all the endeavours to save the marriage has failed; that, the tie between the parties has broken beyond repair and there is no possibility of



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the appellant and the respondent joining together to have any kind of relationship. Hence, the Family Court observed that the marriage between the parties had irretrievably broken down, on account of the long separation between the parties. At this juncture, it is to be reiterated that at the first instance, the appellant through his learned counsel, expressed his consent for divorce.

27. Therefore, this court holds that though the definition of 'cruelty' has ramifications, in the conspectus of the facts of the present case as supported by relevant evidence and applying the legal principles that emerge from the judgments referred to above, the judgment of the Family Court that the acts of the appellant towards the respondent caused the marriage as irretrievably broken down, thereby dissolving the marriage between the parties by a decree of divorce, does not require any interference and it is to be confirmed.

28. In the result, both these appeals stand dismissed. No costs. Consequently, connected M.Ps are closed.

(R.M.D., J.) (J.S.N.P., J.)

08.03.2023

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R.MAHADEVAN, J.
and
J. SATHYA NARAYANA PRASAD, J.

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To
The Presiding Officer
Principal Family Court
Chennai

CMA Nos. 1001 & 1004 of 2019

08.03.2023