



C.M.S.A(MD)No.7 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.10.2023

Delivered on : 31.10.2023

CORAM

THE HONOURABLE MR. JUSTICE K.MURALI SHANKAR

C.M.S.A.(MD)No.7 of 2019

and

C.M.P(MD)No.1575 of 2019

M.Lakshmi : Appellant/Respondent/Respondent

Vs.

D.Kumar : Respondent/Appellant/Petitioner

Prayer : This Civil Miscellaneous Second Appeal is filed under Section 28 of Hindu Marriage Act r/w Section 100 of C.P.C, as against the judgment and decree, dated 20.09.2017 in C.M.A.No.5 of 2016 on the file of the I Additional District Judge, Madurai, reversing the judgment and decree in H.M.O.P. No.186 of 2010, dated 17.11.2015 on the file of the III Additional Sub Judge, Madurai.

For Appellant : Mr.K.Balasubramanian

For Respondent : No Appearance



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JUDGMENT

The Civil Miscellaneous Second Appeal is directed against the decree and judgment passed in C.M.A.No.5 of 2016, dated 20.09.2017 on the file of the Ist Additional District Court, Madurai, reversing the judgment and decree in H.M.O.P.No.186 of 2010, dated 17.11.2015 on the file of the IIIrd Additional Sub Court, Madurai, dismissing the petition for divorce.

2. For the sake of convenience and brevity, the parties will be hereinafter referred as per their ranking/status before the trail Court.

3.The facts, which are not in dispute are :

(i) The marriage between the petitioner and the respondent was solemnized on 30.06.2008, at Madurai as per Hindu customs and rites;

(ii) The petitioner was working in Singapore at the time of marriage;

(iii) The respondent is an engineering graduate;

(iv) After marriage, both of them have started their matrimonial life in the house of the petitioner's father;

(v) The petitioner had left for Singapore on 21.07.2008;



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(vi) The petitioner's father has filed a suit in O.S.No.144 of 2009 against the respondent for permanent injunction restraining the respondent from trespassing into the property and interfering with the peaceful possession and enjoyment of the house property, where the petitioner and the respondent had started their marital life.

(vii) The respondent has filed a petition under the Domestic Violence Act, claiming the reliefs of residence order, protection order and for damages against the in-laws in Cr.M.P.No.4611 of 2009 on the file of the Court of the Judicial Magistrate No.IV, Madurai and that subsequently, the petition was ordered to be dismissed.

(viii) The respondent has lodged a complaint and on that basis, FIR came to be registered in Crime No.135 of 2010 on the file of the Koodalpudur Police Station against her in-laws and the relatives of her husband alleging that they have harassed and attacked her and caused criminal intimidation, for the alleged offence under Sections 147, 148, 498 (A) and 506(ii) I.P.C., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.



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(ix) The petitioner's father was arrested in connection with the above case and subsequently, released on bail and the other accused had obtained anticipatory bail.

(x) The respondent has filed a maintenance case in M.C.No.38 of 2010 before the Additional Chief Judicial Magistrate, Madurai and after enquiry, the learned Magistrate has passed an order, dated 26.03.2014, directing the petitioner to pay monthly maintenance of Rs.10,000/- to the respondent. Aggrieved by the said order, the petitioner has preferred the revision before this Court in CrI.R.C (MD)No.285 of 2014 and the same was ordered to be dismissed on 22.11.2019.

(xi) During pendency of the divorce petition, the respondent has filed a petition in H.M.O.P.No.335 of 2014, seeking restitution of conjugal rights and since the petitioner had remained ex-parte, restitution of conjugal rights was ordered and that subsequently, on the petition filed by the petitioner, ex-parte order was set aside. After full trial, the learned II Additional Subordinate Judge has passed an order, dated 12.09.2017, allowing the petition in H.M.O.P.No.335 of 2014 and thereby granting the relief of restitution of conjugal rights.



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4. The petitioner, by alleging that the respondent/wife had treated him with cruelty, has filed a petition seeking divorce in H.M.O.P.No.186 of 2010 on the file of the III Additional Subordinate Court, Madurai. The respondent has filed a counter statement denying the allegations levelled by the petitioner and alleging that her in-laws had treated her with cruelty. During trial, the petitioner has examined himself as P.W.1 and exhibited 6 documents as Ex.P.1 to Ex.P.6. The respondent has examined herself as R.W.1 and exhibited 23 documents as Ex.R.1 to Ex.R.23.

5. The learned Subordinate Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the order, dated 17.11.2015, refusing to grant divorce and dismissed the petition. Aggrieved by the order of dismissal, the petitioner has preferred an appeal in C.M.A.No. 5 of 2016 and the learned Ist Additional District Judge, Madurai, considering the evidence available on record and on hearing the arguments of both sides, has passed the impugned judgment, dated 20.09.2017 setting aside the order of dismissal and granted divorce. Challenging the order of divorce granted by the appellate Court, the respondent/wife has preferred the present appeal.



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6. The learned counsel for the respondent would submit that the respondent had taken steps on 15.07.2008 to include her husband's name in the passport, enabling her to move Singapore to continue her marital life, but the appellate Court without considering the above aspect has given a finding that the respondent refused to give her passport to the petitioner, enabling him to take visa to Singapore.

7. The learned counsel for the respondent would further submit that the respondent was living in the matrimonial home as per the instructions of her husband, even after he went to Singapore and that since her father-in-law and other family members were giving troubles to drive her out from matrimonial house, she was constrained to file a petition under Domestic Violence Act and continued to live there, but the appellate Court has recorded a wrong finding that the respondent left her matrimonial home on 19.07.2008 itself and never returned.

8. The learned counsel for the respondent would further submit that there was absolutely no problem between the petitioner and the respondent and the same was not taken note of, by the appellate Court and that the



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appellate Court has erroneously concluded that the communication sent by the respondent to the petitioner at Singapore was not from the address of matrimonial home, but the same cannot be taken to be documents to show that the respondent resided in the house of her husband, after he left abroad. He would further submit that the respondent has instituted H.M.O.P.No.335 of 2014 for restitution of conjugal rights and the same was decreed; that the petitioner without challenging the said order cannot maintain the present HMOP for divorce and that the above aspect was not considered by the appellate Court.

9. The learned counsel for the respondent would further submit that the petitioner himself in his evidence would admit that the marriage was consummated. He would further submit that since the petitioner had been delaying to take the respondent to Singapore and filing of the Civil Suit against the respondent by the petitioner's father, she was forced to file the maintenance case.

10. He would further submit that the trial Court by observing that the allegations are of trivial in nature, refused to dissolve the marriage and rightly dismissed the petition, but the appellate Court without any strong



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charges and without taking note that the allegations are of trivial in nature, has reversed the trial Court order and that therefore, the judgment and decree of the appellate Court are liable to be set aside.

11. This Court at the time of admission has framed the following substantial questions of law :

(i) While the order of competent Court under Section 9 of the Hindu Marriage Act is in force, without made any challenge to said order, whether the application under Section 13 (1) of Hindu Marriage Act can be ordered in favour of Husband/respondent?

(ii) When the judgment and decree under Section 9 of Hindu Marriage Act is in favour of wife/petitioner, without challenging the same, whether the application for divorce filed by the Husband under Section 13 (1) is maintainable?

(iii) Whether the appellate Court is correct in granting divorce under Section 13 (1) (ia) of Hindu Marriage Act, on the ground of cruelty, if there is no sustained course of abusive and humiliating treatment rendering the life of spouse?



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WEB COPY **Point No .I :**

12. As already pointed out, the petitioner-husband has claimed divorce on the ground of cruelty and more particularly, mental cruelty. In the appellate Court, the petitioner has raised the following main contentions relating to cruelty;

(i) The respondent refused to give her passport to the petitioner to enable him to take Visa for the respondent to enable her to join the petitioner in Singapore.

(ii) The respondent left the matrimonial home on 19.07.2008 and never returned to the matrimonial home and never heeded to the attempts made by the petitioner to rejoin him.

(iii) The respondent caused severe mental agony to the petitioner by lodging false complaints with regard to dowry harassment against his father and relatives, due to which, the petitioner's father was imprisoned and others were forced to approach the Court for seeking anticipatory bail.

(iv) The respondent was very indifferent to the petitioner and never responded to him in a proper manner and stopped all forms of communication with the petitioner.



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(v) The respondent and her parents abused and threatened his parents and other family members due to which, severe mental agony was caused to the petitioner.

13. A perusal of the petitioner's main petition and his evidence and other records would reveal that the petitioner has been attempting to project a case that the respondent was in the matrimonial home only for four days and even in those four days, she was not cordial, but disrespectful; that her behavior was abnormal and was disturbing and subsequently, she left for the parental home and never returned and that there was no connection between her and the petitioner and his family members. Moreover, the petitioner went to the extent of alleging that the marriage itself was not consummated. But, in cross examination, the petitioner has given go by to the above allegation.

14. The appellate Court, considering the evidence of petitioner, has specifically observed that since the respondent had refused to give her passport so as to enable the petitioner to take Visa, the petitioner was not in a position to take her to Singapore. In the main petition as well as in the chief examination affidavit, the petitioner would say that immediately after marriage, he had requested the respondent to give her passport and since she



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was giving unacceptable reason, he contacted her parents, but they have also informed that they wanted the respondent to remain in India for some more time and that therefore, his steps to take her to Singapore were ended in vain. But in cross examination, he would say that after solemnization of marriage on 30.06.2008, the same was registered on 10.07.2008; that the marriage was immediately registered, so as to enable him to take her to Singapore; that his parents and the respondent's parents had accompanied them to the Registrar Office and they had subscribed their signatures as witnesses; that Visa can be taken, if the husband's name finds place in the passport and that since the respondent's passport contains the name of her father, the petitioner and the respondent had visited the Passport Office and applied for the necessary changes.

15. The petitioner in his chief examination affidavit would say that after marriage, the respondent was with him in the matrimonial home for 8 days. But, in cross examination, he would say that both of them were in his parents house for four days.

16. As already pointed out, even according to the petitioner, both of them along with their parents went to the Registrar Office and got their



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marriage registered on 10.07.2017 and that subsequently, both of them had visited the Passport Office. As rightly contended by the learned counsel for the respondent, even as per the above admission of the petitioner, the main contention of the petitioner that the respondent was in the matrimonial home only for 4 - 8 days, is proved to be false.

17. The petitioner, in the main petition as well as in his chief examination affidavit, would say that the next day to their marriage, she had refused to get blessings from the relatives and elders, that the petitioner was shocked to notice the abnormal behavior of the respondent and hence, the petitioner's parents were constrained to inform the same to the respondent's parents, that when the abnormal behavior of the petitioner was pointed out to the respondent's parents, they had abused the petitioner and his parents in the presence of their relatives and others and that the petitioner and his family members were very much shocked the way in which, the respondent's parents had responded.

18. As rightly contended by the learned counsel for the respondent, if that be the case, it is not known as to how the petitioner and his family had accompanied the respondent and her parents to the Registrar Office, ten days after marriage for marriage registration.



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19. It is the further case of the petitioner that he had attempted to contact the respondent through phone from Singapore, but the respondent's father and brother have not permitted to talk with the respondent; that despite their opposition, when the petitioner had contacted the respondent, she was not responding properly; that he was refused to enter into the parental house of the respondent and that the petitioner and his parents' efforts to contact the respondent and to take the respondent to Singapore were of no avail.

20. It is their further case that the petitioner had again visited India in July 2009 and requested the respondent to join with him, but the respondent refused to accompany him. But in cross examination, P.W.1 would say that he went to the house of the respondent in November-2008 and demanded passport, but the respondent's parents had informed him that passport was not ready.

21. When a specific question was put to the petitioner as to why he had not taken any steps to get Visa from June - December, he would say that the respondent's father alone had informed that the respondent had to help them for six months. But that does not find place in the main petition.



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22. It is pertinent to note that though the petitioner has alleged that there was absolutely no connection between him and the respondent and his efforts to contact the respondent through phone were of no avail, he would admit in his cross examination that they were talking each other through phone at that point of time.

“நான் சிங்கப்பூரில் குடியிருப்பதற்கு வீடு எடுத்துள்ளேன் என்று எதிர்மனுதாரருக்கு தொலைபேசியில் தெரியப்படுத்தினேன். கடிதம் மூலமாக தெரியப்படுத்தவில்லை. அந்தக் காலக்கட்டத்தில் நானும் எதிர்மனுதாரரும் தொலைபேசியில் பேசிக் கொண்டிருந்தோம்.”

23. P.W.1 would admit that he had changed his house in December-2009 and he had also shifted to another company in April-2010 and when a specific question was put to him as to whether he had informed the above aspects to the respondent, he would say that he had not contacted the respondent after 2010.

24. As rightly contended by the learned counsel for the respondent, even according to the petitioner, he was in contact with the respondent till the end of 2009. In cross examination, P.W.1 would admit that he has given



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evidence in the maintenance case, pending before the Chief Judicial Magistrate Court and after conducting enquiry, the Court has made an observation that the petitioner had accepted that the respondent was not at fault and the relevant portion is extracted hereunder :

“அந்த உத்தரவில், அந்த மனுவின் எதிர்மனுதாரரான நான் இந்தியாவில் இருக்கும் வரை எனக்கும் என் மனைவிக்கும் எந்தப் பிரச்சனையும் ஏற்படவில்லை என்றும் என்னுடைய குறுக்கு விசாரணையில் என் மனைவி மீது எந்தக் குற்றமும் இல்லை என்று நான் ஒப்புக் கொண்டுள்ளதாகவும் நீதிமன்றம் கருத்து தெரிவித்துள்ளது. நான் திருமணம் முடிந்து முதலில் சிங்கப்பூர் செல்லும் போது எதிர்மனுதாரரின் பெற்றோர்களிடம் நான் சொல்லிவிட்டு தான் சென்றேன்

அப்போது ஏதாவது சம்பவம் நடந்ததா என்றால் அப்போது எந்தப் பிரச்சனையும் இருந்ததில்லை.”

More importantly, P.W.1 would admit “நான் சிங்கப்பூர் கிளம்பும் போது அவரை என் பெற்றோர் வீட்டில் இருக்கச் சொன்னேன்...

நான் சிங்கப்பூர் கிளம்பிய பின் எதிர்மனுதாரர் என் பெற்றோர் வீட்டிற்கு வரவே இல்லை. ... ”

25. As rightly pointed out by the learned counsel for the respondent, as per the above admission of the petitioner, the respondent was in matrimonial home till the petitioner had left for Singapore.



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26. The appellate Court has mainly commented on the Court proceedings taken by the respondent against the petitioner's parents and other family members. Admittedly, the petitioner's father by alleging that the respondent and his men were attempting to trespass into the house property on 03.08.2009 ; 09.08.2009 and 11.08.2009, has filed the suit for permanent injunction restraining the respondent from trespassing into the property and interfering with the peaceful possession and enjoyment of the property by the petitioner's father.

27. In Ex.P.1/plaint filed in O.S.No.144 of 2009, the petitioner's father has also alleged that when the petitioner was in India, the respondent's parents went to the extent of causing hurt to the petitioner and that when the petitioner's father was away, the respondent all of a sudden attempted to break open the main gate and trespassed into the property on 09.08.2009 and 11.08.2009 and that the petitioner's father finding the criminal acts of the respondent and her henchmen, prevented them from doing any further act.

28. Admittedly, neither the petitioner nor his father has preferred any police complaint for the attacking and causing hurt to the petitioner or for



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the respondent's alleged attempt to break open the main gate and trespass into the property with her henchmen. But it is evident from the records that the respondent has immediately filed a complaint under the provisions of Domestic Violence Act against her in-laws alleging that they had harassed her continuously and subjected her to cruelty and that when they went to the extent of forcibly sending her out of the matrimonial home, she was constrained to file the above complaint.

29. As already pointed out, the respondent has also preferred a complaint against her in-laws, raising serious charges and on that basis, FIR came to be registered. It is also not in dispute that the respondent has also laid a case claiming maintenance from the petitioner and obtained orders. No doubt, as already pointed out, the petitioner's father was arrested in connection with the case in Crime No.135 of 2010 and subsequently, he was enlarged on bail.

30. As rightly contented by the learned counsel for the respondent, the respondent has every right to invoke the provisions of Domestic Violence Act, when there was an attempt to send her out forcibly from the matrimonial home and for the harassment caused to her by the in-laws and that when she



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was harassed, attacked and threatened, she was forced to lodge a police complaint and that therefore, the above proceedings taken by the respondent legally, by no stretch of imagination, can be termed as proceedings taken falsely and the same would amount to cruelty.

31. As already pointed out, during the pendency of the divorce petition, the respondent has filed the H.M.O.P.No.335 of 2014 for restitution of conjugal rights. According to the petitioner, when the divorce petition was in part-heard stage, the respondent purposely and wantonly filed the petition for restitution of conjugal rights as an after thought and that as she was not really having any intention to join with the petitioner and in order to prevent the petitioner from getting the order of divorce, she has been alleging that she was/is ready and willing to join with the petitioner.

32. The learned counsel for the respondent would submit that the respondent was under the impression that the divorce petition itself was filed on the compulsion of his father and his family members and that the respondent was not having any problem with the petitioner at any point of time and hence, she has not taken any steps for filing the petition for restitution of conjugal rights earlier. But, after the petitioner has chosen to depose evidence



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in support of the divorce petition and against the respondent, she was constrained to take steps for restitution of conjugal rights.

33. Admittedly, the respondent has not raised any serious charges or allegations against the petitioner in any of the proceedings initiated by her and that she has levelled allegations only against her in-laws. Considering the above, this Court finds some merit in the contentions raised by the learned counsel for the respondent.

34. No doubt, the respondent has filed the petition for restitution of conjugal rights during the pendency of divorce petition, but since the petitioner had remained ex-parte, order came to be passed granting restitution of conjugal rights.

35. The learned Sub Judge, taking note of the fact that the petition for setting aside the ex-parte decree was pending and the ex-parte decree is a valid decree, has come to a decision that the divorce petition is legally not maintainable, in view of the order for restitution of conjugal rights.



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36. As already pointed out, the ex-parte decree was set aside, but after full trial, the relief of restitution of conjugal rights was granted in favour of the respondent vide order, dated 12.09.2017. Admittedly, divorce was granted in C.M.A.No.5 of 2016 vide judgment dated 20.09.2017. The fact remains that the appellate Court has not considered the granting of restitution of conjugal rights during the pendency of the appeal and the legality of granting divorce.

37. Generally, when any spouse files a petition for divorce and the other spouse files a petition for restitution of conjugal rights, the Court is duty bound to conduct a joint trial and to pass a common order. But, if the petitions are filed at different point of time and if any petition is already decided, then there arises difficulty in deciding the subsequent petition. Suppose if divorce is granted, in the petition filed by any of the spouse, then there can be no order for restitution of conjugal rights in the petition filed prior or subsequent to the filing of the divorce petition.

38. Similarly, if the restitution of conjugal rights is ordered and the same has become final, whether divorce can be granted subsequently, is a point for consideration ?



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39. If a matrimonial Court, after giving a finding that a wife was subjected to cruelty and hence, she was forced to leave the matrimonial home and that therefore, she is entitled to get the relief of restitution of conjugal rights, another petition claiming divorce on the ground of cruelty is filed by the other spouse, then that Court can give a finding that the husband was subjected to cruelty by the wife and hence, he is entitled to get the decree of divorce ? Certainly not.

40. In the present case also, as already pointed out, the competent matrimonial Court has granted the decree for restitution of conjugal rights and admittedly, the petitioner has not preferred any appeal and as such, the said decree has attained finality. The principle underlying the doctrine of *res judicata* can also be made applicable and as such, the finding or decision given in the petition for restitution of conjugal rights cannot be set aside indirectly by granting divorce subsequently.

41. Considering the above, this Court has no hesitation to hold that since the decree for restitution of conjugal right has already become final, that order cannot be nullified by granting divorce subsequently and on that ground also, the impugned judgment of appellate Court is liable to be set aside.



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42. Admittedly, the word cruelty has not been defined or explained in the Act. But, our Hon'ble Apex Court in **A.Jayachandra Vs. Annel Kaur**, reported in **(2005)2 SCC 22**, has explained the concept of cruelty and the relevant paragraphs are extracted hereunder:

10.The expression "cruelty" has not been defined in the Act. Cruelty can be physical or mental. Cruelty which is a ground for dissolution of marriage may be defined as willful 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. The question of mental cruelty has to be considered in the light of the norms of marital ties of the particular society to which the parties belong, their social values, status, environment in which they live. Cruelty, as noted above, includes mental cruelty, which falls within the purview of a matrimonial wrong. Cruelty need not be physical. If from the conduct of his spouse same is established and/or an inference can be legitimately drawn that the treatment of the spouse is such that it causes an apprehension in the mind of the other spouse, about his or her mental welfare then this conduct amounts to cruelty. In delicate human relationship like matrimony, one has to see the probabilities of the case. The concept, a proof beyond the shadow of doubt, is to be applied to criminal trials and not to civil matters and



certainly not to matters of such delicate personal relationship as those of husband and wife. Therefore, one has to see what are the probabilities in a case and legal cruelty has to be found out, not merely as a matter of fact, but as the effect on the mind of the complainant spouse because of the acts or omissions of the other. Cruelty may be physical or corporeal or may be mental. In physical cruelty, there can be tangible and direct evidence, but in the case of mental cruelty there may not at the same time be direct evidence. In cases where there is no direct evidence, Courts are required to probe into the mental process and mental effect of incidents that are brought out in evidence. It is in this view that one has to consider the evidence in matrimonial disputes.

11.The expression 'cruelty' has been used in relation to human conduct or human behaviour. It is the conduct in relation to or in respect of matrimonial duties and obligations. Cruelty is a course or conduct of one, which is adversely affecting the other. The cruelty may be mental or physical, intentional or unintentional. If it is physical, the Court will have no problem in determining it. It is a question of fact and degree. If it is mental, the problem presents difficulties. First, the enquiry must begin as to the nature of cruel treatment, second the impact of such treatment in the mind of the spouse, whether it caused



reasonable apprehension that it would be harmful or injurious to live with the other. Ultimately, it is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. However, there may be a case where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or 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 (See Sobh Rani v. Madhukar Reddi, AIR 1988 SC 121).

43. In ***Samar Ghosh Vs. Jaya Ghosh***, reported in **(2007)4 SCC 511**, Hon'ble Apex Court has listed out the illustrative cases, where inference of mental cruelty can be drawn and the same are extracted hereunder:

“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) xxx xxx xxx

(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) xxx xxx xxx

(viii) xxx xxx xxx

(ix) xxx xxx xxx

(xi) *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.*



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(xi) xxx xxx xxx

(xii) xxx xxx xxx

(xiii) xxx xxx xxx

(xiv) *Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.*”

44. In ***K.Srinivas Rao Vs. D.A.Deepa*** reported in **(2013)5 SCC 226**, Hon'ble Apex Court in addition to the instances illustrative of mental cruelty noted in Samar Ghosh's case, added a few more and the same are as follows:

“Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”



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45. It is pertinent to note that cruelty may be either physical or mental. Cruelty can be inferred where one spouse has so treated the other and manifested such feelings towards her or him as to cause in her or his mind reasonable apprehension that it will be harmful or injurious to live with the other spouse.

46. In the present case, admittedly, the petitioner has not alleged that he was attacked by the respondent physically, but only claimed that he was subjected to mental cruelty by the respondent. As already pointed out, this Court has specifically observed that the allegations raised by the petitioner about the abnormal behavior or objectionable conduct and the related allegations, even as per the evidence of the petitioner, appears to be false and the same were made only to make out a ground for cruelty. Moreover, as rightly pointed out by the learned counsel for the respondent, there are neither pleadings nor evidence to show that the respondent has treated him and manifested such feelings towards him as to cause in his mind reasonable apprehension that it will be harmful or injurious to live with the respondent.



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47. In the case on hand, according to the parties, they were living separately for the past 13 years, but that by itself is not sufficient to infer any cruelty or to conclude that the marriage has broken down.

48. Recently, our Hon'ble Supreme Court in ***DR. Nirmal Singh Panesar Vs. Paramjit Kaur Panesar @ Ainder Kaur Panesar @ Ajinder K Panesa*** [Crl.A.No.2045 of 2011, dated 10.10.2023], while considering the separation of the couple for 30 years, where the appellant/husband and the respondent/wife were aged 87 years and 82 years respectively at that time, has come to a decision that the appellant has failed to prove the ground of cruelty and desertion and was not inclined to invoke its discretion under Article 142 of the Constitution for dissolving their marriage and expressed their opinion that the institution of marriage occupies an important place and plays an important role in the society and the relevant passages are extracted hereunder:

“18. However, in our opinion, one should not be oblivious to the fact that the institution of marriage occupies an important place and plays an important role in the society. Despite the increasing trend of filing the Divorce proceedings in the courts of law, the institution of marriage is still



considered to be a pious, spiritual, and invaluable emotional life-net between the husband and the wife in the Indian society. It is governed not only by the letters of law but by the social norms as well. So many other relationships stem from and thrive on the matrimonial relationships in the society. Therefore, it would not be desirable to accept the formula of “irretrievable break down of marriage” as a strait-jacket formula for the grant of relief of divorce under Article 142 of the Constitution of India.

19. So far as the facts of the present case are concerned, as stated earlier, the appellant-husband is aged about 89 years and respondent-wife is aged about 82 years. The respondent all throughout her life has maintained the sacred relationship since 1963 and has taken care of her three children all these years, despite the fact that the appellant-husband had exhibited total hostility towards them. The respondent is still ready and willing to take care of her husband and does not wish to leave him alone at this stage of life. She has also expressed her sentiments that she does not want to die with the stigma of being a “divorcee” woman. In contemporary society, it may not constitute to be stigma but here we are concerned with the respondent’s own sentiment. Under the circumstances, considering and respecting the sentiments of the respondent wife, the Court is of the opinion that exercising the discretion in favour of the appellant under Article 142 by



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dissolving the marriage between parties on the ground that the marriage has irretrievably broken down, would not be doing “complete justice” to the parties, would rather be doing injustice to the respondent. In that view of the matter, we are not inclined to accept the submission of the appellant to dissolve the marriage on the ground of irretrievable break down of marriage.

49. In the case on hand, as already pointed out, the parties were living separately from 2010 onwards. Though the respondent has taken some proceedings against her in-laws, except the maintenance claim and for restitution of conjugal rights, she has not added her husband in the criminal complaint and in the domestic violence complaint and more importantly, she has not raised any charges against her husband. Unfortunately, the couple were not blessed with any child. Despite that, all along she has been stating that she is ready and willing to join with the petitioner, even now. As rightly contended by the learned counsel for the respondent, the petitioner after getting the divorce from the appellate Court, has not even chosen to enter into appearance in the present appeal.

50. This Court in its order passed in CrI.R.C(MD)No.285 of 2014, considering the evidence available on record, has observed that due to quarrel



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between the family members of the husband and the respondent/wife, the respondent/wife came to her paternal home and perusal of the evidence of the parties would reveal that due to the cruelty committed by the family members of the petitioner/husband, the respondent/wife left the matrimonial home and the petitioner/husband neglected to maintain his wife, dismissed the revision.

51. Considering the above, the appellate Court without considering the above aspects in proper perspective, by alleging that the trial Court without advertng to the major allegations, has come to the wrong conclusion that the problems existed between the parties only amount to normal wear and tare in the matrimonial life, has taken the case of the petitioner and his allegations as gospel truth, has concluded that the ground of cruelty has been proved and hence, this Court has no hesitation to hold that the impugned judgment is liable to be set aside and is set aside accordingly and the above points are answered accordingly.

52. In the result, the Civil Miscellaneous Second Appeal is allowed and the decree and judgment in C.M.A.No.5 of 2016 on the file of the Ist Additional District Judge, Madurai, is set aside and the judgment and decree in H.M.O.P.No.186 of 2010, dated 17.11.2015 on the file of the III Additional



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Sub Judge, Madurai, stands confirmed. No costs. Consequently, connected

Miscellaneous Petition is closed.

31.10.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
das

To

- 1.The III Additional Sub Judge, Madurai.
2. The I Additional District Judge, Madurai.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

das

Pre-delivery order made in
C.M.S.A.(MD)No.7 of 2019
and
C.M.P(MD)No.7 of 2019

31.10.2023