



C.M.S.A(MD)No.54 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 10.11.2022

PRONOUNCED ON:09.03.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.S.A(MD)No.54 of 2021

and

C.M.P.(MD)No.9750 of 2021

R.Sankarram

: Appellant/Appellant/Petitioner

Vs.

K.Kalaiselvi

: Respondent/Respondent/
Respondent

PRAYER:- Civil Miscellaneous Second Appeal filed under Section 28 (1) of the Hindu Marriage Act 1955 r/w Section 100 of the Code of Civil Procedure against the judgment and decree dated 05.08.2021, made in H.M.C.M.A.No.11 of 2020 on the file of the Principal District and Sessions Court, Virudhunagar District at Srivilliputtur allowing the judgment and decree dated 20.02.2020 made in H.M.O.P.No.52 of 2016, on the file of the Additional Sub Court, Srivilliputtur.



For Respondent :Mr.H.Arumugam
for Mrs.A.Banumathy

The Civil Miscellaneous Second Appeal is directed against the judgment and decree passed in H.M.C.M.A.No.11 of 2020, dated 05.08.2021, on the file of the Principal District Court, Virudhunagar District at Srivilliputtur, confirming the judgment and decree passed in H.M.O.P.No.52 of 2016, dated 20.02.2020, on the file of the Additional Subordinate Court, Srivilliputtur, in dismissing H.M.O.P., for divorce filed under Section 13(1)(i-a) of the Hindu Marriage Act.

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

3.The facts which are not in dispute and admitted on either side are

* the appellant/petitioner an M.C.A., graduate and the



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respondent/respondent who studied M.S.,(I.T) were working in Sri Moogambigai Infotecs, Sivagangai;

* they become friends in the working place and subsequently were loving each other;

* their marriage was solemnised on 11.04.2005 at Chennai in the presence of the petitioner's parents and their relatives and got their marriage registered on the same day;

* their marriage reception on 22.06.2008 at Pathrakaliamman Trust Marriage Hall, Thalavoipuram, Rajapalayam Taluk,

*that the parents of the respondent never consented to this union and did not attend the marriage or the reception;

* out of this wedlock, the couple had two daughters, the eldest Nandhini Sri born on 09.03.2009 and the younger Harshini on 10.04.2014.

4. It is not in dispute that the petitioner had earlier filed H.M.O.P.No.2431 of 2009 seeking divorce before Family Court, Chennai, which was subsequently withdrawn, and the petitioner again filed H.M.O.P.No.601 of 2013 for the very same relief of divorce, before the Family Court, Chennai. The respondent in turn had filed



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H.M.O.P.No.1440 of 2013, for restitution of conjugal rights and later in view of some compromise, both the petitions were withdrawn.

5. The petitioner, by alleging that the respondent/wife had treated him with cruelty, has again filed a petition for divorce in H.M.O.P.No.52 of 2016, on the file of the Subordinate Court, Srivilliputtur. The respondent has filed her counter statement denying the allegations and alleged that the petitioner and his mother had treated her with cruelty. During trial, the petitioner examined himself as PW1 and exhibited eight documents as Ex.P1 to Ex.P8. The respondent examined herself as RW1 and adduced no documentary evidence.

6. The learned Subordinate Judge, upon considering the evidence both oral and documentary and on hearing the arguments of either side, has passed the judgment dated 20.02.2020, refusing to grant divorce and dismissed the petition. Aggrieved by the dismissal, the petitioner had preferred an appeal in H.M.C.M.A.No.11 of 2020, on the file of the Principal District Court, Virudhunagar at Srivilliputhur. The learned Principal District Judge, considering the evidence available on record and on hearing the arguments of both sides, has passed the impugned



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judgment dated 05.08.2021, dismissing the appeal and thereby confirming the judgment of the trial Court, dated 20.02.2020. Aggrieved by the dismissal of the appeal, the petitioner/husband has now come forward with the present appeal.

7. The learned Counsel for the appellant/petitioner would submit that the Courts below have failed to appreciate the appellant's family and their broad mind in accepting and agreeing the love marriage of the petitioner with the respondent, who belongs to a different community, that the marriage was totally boycotted by the respondent's family, that the appellant's family were involved in public service, formed Ram Charitable Trust and made the respondent also as a trustee and that the Courts below have failed to consider and appreciate the above aspects.

8. The learned Counsel would strongly contend that the Courts below have failed to consider the Compact Disk and memory card filed under Ex.P8 for establishing and proving the conduct of the respondent which tantamounts to cruelty, that the Courts below have failed to consider her phone conversation and the subsequent admission made before the trial Court that 100 persons in her community are ready to



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marry her with her two children, that they have failed to take note of all the recorded abusive and unparliamentary language used by the respondent and that the said conversation itself would go to show that she was guilty of causing mental cruelty to the petitioner.

9. The learned Counsel would further contend that though the appellant has filed two divorce petitions, the same were withdrawn for the purpose of reunion and taking note of the welfare of the children. The learned Counsel would further submit that in a matrimonial relationship where predominantly the husband and wife share their lives in a closed frame, it is not possible to prove all the acts of each other and the Courts should have considered these vital points with utmost care and prudence before passing any orders. The learned Counsel would further submit that the Courts below have failed to consider that the respondent was always alleging that her mother-in-law always demanded the respondent's salary and so, she arranged bank transfer of her salary from her account to her mother-in-law's account and when she was confronted to produce her bank details, she had denied the same and admitted that her salary was never transferred to her mother-in-law's account. He would further submit that the concocted allegation of dowry is totally



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false and that the repeated allegation of beating and physical assault was intentionally made in the counter and proof affidavit, but even the false dowry complaint did not speak about the alleged physical assault. He would further submit that the respondent herself in her cross-examination admitted that she never took any initiative to rejoin her husband/appellant after the first divorce petition, would go to show the generosity of the husband, that the respondent/wife never allowed the appellant to meet his children and forced him to file H.C.P., and that the Courts below have failed to take note of the conduct of the respondent in filing the domestic violence complaint in D.V.C.No.10 of 2016 after the withdrawal of the second divorce petition and the birth of the second child goes to show that the appellant was made to run from pillar to post and to face multiple litigations. The Courts have failed to take note of the fact that there is irretrievable break down of marriage for the last seven years between the appellant and the respondent and therefore, the judgments of the Courts below are liable to be set aside.

10. The Substantial Questions of Law framed by this Court are:

(1) Whether the appellate Court erred in not considering Ex.P.8

Compact Disk, despite showing that the same contains the phone



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conversation between the petitioner and the respondent wherein the respondent had abused and used unparliamentary language against the petitioner and went to the extent of saying that 100 persons in her community are ready to marry her along with two children;

(2) Whether the appellate Court erred in dismissing the appeal, despite showing that the appellant has proved that he was treated with mental cruelty by the respondent and that their marriage had broken down irretrievably?

(3) Whether the appellant/petitioner has proved the ground of alleged mental cruelty caused by the respondent?

(4) Whether the appeal is liable to be allowed?

(5) Whether the documents filed by the appellant before this Court as additional documents can be received?

Point No.5:

11. The appellant/petitioner has filed an application in C.M.P. (MD)No.9809 of 2021 under Order 41 Rule 27 of the Code of Civil Procedure for reception of additional evidence. The petitioner has sought permission to produce the trust deed of “Ram Public Charitable Trust”, in which the petitioner's family members including the respondent are trustees; employment identification card of the petitioner's mother;



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deposition of the respondent recorded in D.V.C.No.10 of 2016; copies of the complaint along with C.S.R., given by the respondent against her parents and interim order in H.C.P.(MD)No.161 of 2018 as additional evidence.

12. The petitioner's case is that his father, founder of Ram Public Charitable Trust, has made the respondent also as co-trustee of the Board and the said document is to be received as additional evidence to show that the family was treating the respondent with respect. It is the further case of the petitioner that in order to show that the petitioner's mother was a working woman for over 30 years in a Bank and she knows the problems of a working woman, her employment identification card is to be received. According to the petitioner, the deposition of the respondent given in D.V.C., case, would support the case of the petitioner and would prove the acts of the respondent which tantamounts to cruelty.

13. The respondent, being afraid of her own family members, has lodged a complaint seeking police protection to her and her husband and for that purpose, a copy of the complaint along with C.S.R., are to be received. Since the respondent has not allowed the petitioner or his



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parents to see their children, he was forced to file H.C.P., and got interim orders and the copy of the interim order is sought to be produced as additional evidence.

14. The respondent has filed a counter affidavit disputing the petitioner's averments and further stated that the petitioner's affidavit does not say any valid reason for not presenting the above documents before the trial Court or in the appellate Court and that the affidavit does not contain any particulars as to when the documents were misplaced and when the same were traced.

15. It is the specific case of the respondent that since their marriage was a love marriage and as her parents opposed the same, she gave a complaint at the instance of her husband against her parents to safeguard the situation, that when their marriage was accepted by the petitioner's family, naturally when a family trust was created, one will include all the family members of the family, but does not mean cruelty alleged in the cause of action which is a subsequent one is not correct. It is the further contention of the respondent that the employment identification card of the mother-in-law would not help, as her



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employment is not in dispute, that the deposition, complaints and the orders passed in H.C.P., are all matter of evidence which were available with them and they cannot now contend that the documents were misplaced or mixed up.

16. Admittedly, the petitioner has filed the main petition seeking divorce on the ground of cruelty. The point to be decided is as to whether the petitioner has proved the ground of cruelty. As rightly contended by the learned Counsel for the respondent, the trust deed, employment identification card, the deposition of the respondent, the complaint lodged by the respondent and the interim order in H.C.P., does not advance the case of the petitioner any further. At this juncture, it is necessary to refer the decision of Hon'ble Supreme Court in ***Sanjay Kumar Singh Vs. The State of Jharkhand*** in Civil Appeal No. 1760 of 2022, wherein by referring to the earlier decision of Hon'ble Supreme Court in ***A.Andisamy Chettiar Vs. A.Subburaj Chettiar***, reported in ***(2015)17 SCC 713***, it has been specifically observed that the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it



17. Applying the above law laid down by Hon'ble Supreme Court on the facts of the present case, this Court is of the clear view that the evidence and other materials already available before this Court are sufficient enough to pronounce the judgment in the present case, without going into consideration the additional evidence sought to be adduced.

18. Regarding the deposition of the respondent recorded in D.V.C., the entire evidence cannot be marked and the same can be used to contradict the evidence now adduced. More importantly, the respondent was examined in chief on 02.03.2019 and was cross-examined on 12.07.2019. Since the petitioner had not availed the opportunity while examining the respondent before the trial Court, the entire deposition cannot be received as evidence at this stage.



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19. Regarding the other documents, as already pointed out, the same will not help or strengthen the case of the petitioner. Hence, this Court has no hesitation to hold that the above petition is devoid of merits and the same is liable to be dismissed. Accordingly, C.M.P.(MD)No.9750 of 2021 is dismissed.

Points 1 to 4:

20. As already pointed out, the petitioner/husband has claimed divorce on the ground of cruelty and more importantly mental cruelty. As it is the practice, in all matrimonial proceedings, the present litigatns not being an exception, the petitioner/husband and the respondent/wife are making allegations and counter allegations against each other. According to the petitioner, after the birth of the first child, unable to bear the cruelty committed by the respondent on him, he was forced to file the divorce petition in H.M.O.P.No.2431 of 2009, before the Family Court, Chennai. The petitioner has raised the following allegations which made him to file the second divorce petition in H.M.O.P.No.601 of 2013, before the Family Court, Chennai:

- a) the respondent used to quarrel with the petitioner very often;
- b) attempted to commit suicide;
- c) removed Thali and threw away;



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- d) the respondent along with her drunkard brother used to attack the petitioner;
- e) the respondent had refused to live with the petitioner and refused the petitioner to see their children;
- f) settlement talks held on 12.01.2013 at Srivilliputtur Sivan Temple had failed;
- g) the respondent had been threatening to lodge a complaint against the petitioner at Sattur All Women Police Station.

21. It is not in dispute that both the divorce petitions, in view of the settlement arrived at between the petitioner and the respondent, were withdrawn. Moreover, after the withdrawal of the divorce petitions, both of them have started to live together. After the withdrawal of the second divorce petition, they had rented a house at Jothi Nagar, Kelambakkam and started to live with their children.

22. The petitioner for filing the present and third divorce petition, has raised the following allegations/complaints amounting to cruelty:



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- a) after conceiving their second child and due to work burden, the respondent, having mental agony, started to behave as a psychopatient with the petitioner and their child Nandhini sri;
- b) though the petitioner has requested the respondent to resign the job and to take rest, at the instigation of her parents, she refused to accept the same;
- c) meanwhile, she gave birth to the second child Harshini on 10.04.2014 and after three months, she started to proceed for her job and as a result of which, the child's health got affected;
- d) due to heavy workload, she used to behave badly with the petitioner and their children;
- e) though the petitioner had requested the respondent that he will take care of the monetary needs of her parents, she had abused him in filthy language;
- f) since the respondent's brother went abroad, she brought his wife to take care of her children, but her brother's wife started to interfere with the personal affairs of the petitioner and the respondent;
- g) the respondent, at the instigation of her parents and brother's wife, started abusing the petitioner with unparliamentary words and without any respect, threatened to send the petitioner and his



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parents to jail by lodging a false complaint;

- h) when the petitioner had requested the respondent to send back her brother's wife, she started fighting with the petitioner and also attacked him;
- i) the respondent did not allow the petitioner to see their children;
- j) at the intervention of the petitioner's father, both of them started to reside in Muhavoor from 22.08.2015 and subsequently, without intimating anybody, she left the house;

Hence, the petitioner with no other option, filed the present divorce petition.

23. The respondent has filed a lengthy and elaborate counter statement denying the petition averments and further narrated various incidents in which, the petitioner and his mother had treated the respondent very badly. According to the respondent, after delivery of second baby, she was uncomfortable to manage the child and job and hence, she arranged one servant for maintaining their children. But her mother-in-law who was not interested in engaging servant maid, stopped the servant. The respondent has then requested her mother to come over for maintaining the children, but that was also not accepted by the



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petitioner's mother. Thereafter the respondent's brother's wife came to Chennai to help the respondent to maintain their children. But, her mother- in-law started to insult her brother's wife and used filthy language which forced her to return to her native place. According to the respondent, the petitioner and his mother had continuously tortured the respondent to resign her job.

24. It is the further case of the respondent that the petitioner was transferred to Bangalore, that the respondent and her children had stayed in Chennai, but the petitioner compelled the respondent to stay in his native place namely Muhavoor, Rajapalayam, but she denied and hence, he has scolded the respondent and pushed her out of his home. Thereafter, he went to Bangalore and called the house owner that they are vacating the house and when the same was enquired into, the petitioner replied that the respondent and her children should live in platform. Since the petitioner has claimed divorce, it is not necessary to probe the allegations and the complaints levelled by the respondent against the petitioner and his mother.



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25. Admittedly, the word cruelty has not been defined or explained in the Act. But, 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*



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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,



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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).

26. 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 is extracted hereunder:

“11. In Samar Ghosh this Court set out illustrative cases where inference of ‘mental cruelty’ can be drawn. This list is obviously not exhaustive because each case presents its own peculiar factual matrix and existence or otherwise of



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mental cruelty will have to be judged after applying mind to it. We must quote the relevant paragraph of Samar Ghosh. We have reproduced only the instances which are relevant to the present case.

“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.



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(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.*

(xi) xxx xxx xxx

(xii) xxx xxx xxx

(xiii) xxx xxx xxx



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(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.”

27. 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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28. 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.

29. In the case on hand, as already pointed out, the petitioner has mainly alleged mental cruelty, but also alleged that the respondent along with her brother had attacked him physically. Except the above bald averment, the petitioner has not elaborated anything further. The petitioner has not produced any specific evidence to show that the respondent or at her instigation, the petitioner was attacked physically. But, on the other hand, it is the specific contention of the respondent that the petitioner had many times attacked her. The petitioner, in his cross-examination, would admit that the respondent had lodged a complaint before the Sattur All Women Police Station that he had harassed her by beating. Regarding the alleged cruelty committed by the respondent before filing of the earlier two divorce petitions, even assuming that the



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same were true, the petitioner by withdrawing the said petitions and by commencing his cohabitation with the respondent, it is inferred that the cruelty was condoned and as such, the past cruelty even assuming that the same is true, cannot be taken into consideration for deciding the present dispute.

30. The learned Counsel for the petitioner would mainly contend that Ex.P8 – Compact Disc which contains phone conversation between the parties would go to prove the way in which the respondent had abused and ill-treated the petitioner. It is evident from the records that when Ex.P8 was attempted to be marked, the respondent's side has raised objections that without voice test, the same cannot be admitted in evidence. But, as rightly contended by the learned Counsel for the petitioner, the trial Court as well as the appellate Court have not at all considered Ex.P8 and they have not even stated as to whether the document was admissible / inadmissible in evidence, nor the reasons for rejecting the same. After marking the said exhibit, the respondent has filed an application I.A.No.1 of 2019 in H.M.O.P.No.52 of 2016 for sending Ex.P8 – Compact Disk along with memory card to the Forensic Department to find out the genuineness of the conversation shown



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therein. Since the respondent's side had raised objections while exhibiting the same, the learned trial Judge, by observing that since the memory card was produced by the petitioner, it is his duty to prove that the voice found in the memory card was that of the respondent and that as the petitioner has not taken any steps to prove the said exhibit and it would further delay the proceedings, has dismissed the petition. As rightly contended by the learned Counsel for the respondent, even thereafter, the petitioner has not taken any steps to send the memory card to Forensic Lab to find out the genuineness of the voice.

31. The learned Counsel for the petitioner has relied on the judgment of Hon'ble Supreme Court in ***N.Sri Rama Reddy and others Vs. Shri V.V.Giri***, reported in ***AIR 1971 SC 1162*** and argued that the tape recorded statement is admissible in evidence and the relevant paragraphs are extracted hereunder:

“ The tape itself is primary and direct evidence admissible as to what has been said and picked up by the recorder. A previous statement, made by a witness and recorded on tape can be used not only to corroborate the evidence given by the witness in Court but also to contradict the evidence given before the Court, as well as to test the



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*veracity of the witness and also to impeach his impartiality. Thus apart from being used for corroboration, the evidence is admissible. Having due regard to the decisions referred to above, it is clear that a previous statement, made by a person and recorded on tape, can be used not only to corroborate the evidence given by the witness in Court but also to contradict the evidence given before the Court, as well as to test the veracity of the witness and also to impeach his impartiality. Apart from being used for corroboration, the evidence is admissible in respect of the other three last- mentioned matters, under [s. 146](#)(1), Exception 2 to [s. 153](#) and [s. 153\(3\)](#) of the Evidence Act. Therefore it is not possible for us to accept the contention of Mr. Daphtary that the previous statement can be used only for purposes of corroboration but not for the purpose of contradicting the evidence given before the Court. If a previous statement made by a person can be used to corroborate his evidence given before the Court, on principle, we do not see any reason why such previous statement cannot be used to contradict and also for the other purposes referred to above. In particular the fact that the decisions of the Punjab and Calcutta High Courts in *Rup Chand's Case* (AIR PUNJ 173)''*



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32. In the above decision, it has been held that the tape recorded conversation is admissible in evidence if it contains previous statements made by the witness, it could be used to contradict the evidence given before the Court.

33. We are now in electronic and computer era. The above judgment was pronounced on 27.04.1970. Electronic evidence has been recognised vide amendment to the Indian Evidence Act and through the enactment of the Information Technology Act. Moreover, the above judgment relates to election dispute. At this juncture, it is necessary to refer the judgment of this Court reported in **2022(1) MWN (Civil)720 (V.Kannan Vs. G.Ramesh)** and the relevant passage is extracted hereunder:

“12.It is seen from the documents produced on the side of the Appellant, Exs.B1 and Ex.B8 Compact Discs, allegedly contain the recording of phone conversation between Appellant and PW2 & 3. It is claimed by the Appellant that PW2 & 3 also admitted that Appellant signed in blank promissory note, for the Court to draw presumption that suit promissory note was not executed as claimed by the



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Respondent. Admittedly, it is an electronic evidence. Electronic evidence requires certificate under Section 65(B) of Indian Evidence Act for being admitted as evidence. Not only that it appears no efforts have been taken to show that the conversation recorded in Ex.B1 & B8 was really between Appellant and PW2 & 3. No voice analysis test was undertaken before the Court below. Therefore, Ex.B1 and B8 cannot be relied by the Courts.”

34. In a similar case, where the Family Court has allowed the husband to prove the Compact Disk pertaining to the conversation between him and his wife, subject to the condition of its correctness, the same was challenged by the wife before the Punjab and Haryana High Court in ***C.R.No.1616 of 2020 (Neha Vs. Vibhor Garg)***, the High Court by holding that acceptance of the CD by the Family Court allegedly containing conversations between the husband and wife recorded surreptitiously without the consent or knowledge of the wife and allowing the husband's application is unjustified, allowed the C.R., filed by the wife. In that judgment, the decision of the Hon'ble Supreme Court in ***People's Union for Civil Liberties Vs. Union of India***,



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(1997)1 SCC 301 was referred and the relevant paragraph is extracted hereunder:

"18. The right to privacy- by itself- has not been identified under the Constitution. As a concept it may be too broad and moralistic to define it judicially. Whether right to privacy can be claimed or has been infringed in a given case would depend on the facts of the said case. But the right to hold a telephone conversation in the privacy of one's home or office without interference can certainly be claimed as "right to privacy". Conversations on the telephone are often of an intimate and confidential character. Telephone-conversation is a part of modern man's life. It is considered so important that more and more people are carrying mobile telephone instruments in their pockets. Telephone conversation is an important facet of a man's private life. Right to privacy would certainly include telephone-conversation in the privacy of one's home or office. Telephone-tapping would, thus, infract [Article 21](#) of the Constitution of India unless it is permitted under the procedure established by law."



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35. The High Court of Punjab and Haryana in ***Deepinder Singh Mann Vs. Ranjit Kaur*** reported in ***2015 (5) RCR (Civil) 691*** has observed that the computer age is a dangerous age, that the mobile phone or electronic gadgets should not be readily allowed to be used as an instrument of torture and oppression against a wife in a matrimonial action unless the court is satisfied that it might tilt the balance between justice and injustice in its cumulative judicial experience, wisdom and discretion in decision making and a married woman has a valuable right to her privacy of speech with her husband and couples speak many things with each other unwary that every word would be weighed one day and put under the judicial scanner. The following passage in the above ruling is also relevant:

“The Courts cannot actively participate in approving mischief and invite invasion of privacy rights not called for in deciding a case where parties are free to adduce evidence aliunde which may or may not be sufficient to obtain a decree of dissolution of marriage. Fools rush in where angels fear to tread.”



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36. Moreover, Sections 14 and 22 of the Family Court's Act were applicable to the case decided by the Punjab and Haryana High Court and it has been held that there is no quarrel with the position that a Family Court is not bound by strict rules of evidence, but at the same time, the acceptance of CD in question shall amount to a clear breach fundamental right of the wife, i.e., her right to privacy.

37. The above decisions are squarely applicable to the case on hand. In the present case, as already pointed out, the conversation allegedly recorded was after the filing of the present divorce petition. According to the petitioner, the same was recorded in the petitioner's mobile phone. But admittedly, the same was not produced, but on the other hand, they have produced the memory card along with Compact Disk. The petitioner has not produced any evidence to show that the alleged conversation was recorded through the memory card now produced which was inserted in the mobile phone of the petitioner. Since the petitioner has not produced the primary source i.e., the cell phone, he has to produce the certificate as required under Section 65(B) of the Evidence Act. Admittedly, the petitioner has not



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produced any such certificate. Even assuming that the petitioner has complied with the statutory requirements in exhibiting Ex.P8, applying the legal position above referred, this Court has no hesitation to hold that Ex.P8 and its contents cannot be looked into, as it infringes the right of privacy of the respondent.

38. Though the petitioner has been alleging that the respondent used to behave like a psycho patient with him and their children, except the interested testimony of the petitioner, he has not produced any other witness to prove the alleged behaviour. The main contention of the petitioner is that though the petitioner and her mother had been requesting the respondent to give away her job for the purpose of maintaining their children, the same was not accepted by the respondent. It is pertinent to note that previously the petitioner has filed a divorce petition and due to the subsequent compromise between the parties, the same was withdrawn. As rightly contended by the learned Counsel for the respondent, when that is the conduct and behaviour of the petitioner, the respondent cannot be expected to resign her job and depend entirely on the petitioner. Moreover, as rightly pointed out by the learned



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Counsel for the respondent, the above complaint / conduct of the petitioner would only exhibit his male chauvinism.

39. Though the petitioner has alleged that the respondent had threatened to commit suicide by implicating the petitioner and his parents, it is not his case that he had informed to the parents of the respondent or to some other common friends. The petitioner has not produced any iota of evidence to prove the incidents referred in the main petition. On considering the entire evidence available on record, the finding of the Courts below that the petitioner had miserably failed to prove the ground of cruelty cannot be found fault with. Consequently, this Court concludes that the Civil Miscellaneous Second Appeal is devoid of merits and the same is liable to be dismissed.

40. In the result, the Civil Miscellaneous Second Appeal is dismissed, confirming the judgment and decree passed in H.M.C.M.A.No.11 of 2020, dated 05.08.2021, on the file of the Principal District Court, Virudhunagar District at Srivilliputtur, confirming the judgment and decree passed in H.M.O.P.No.52 of 2016, dated 20.02.2020, on the file of the Additional Subordinate Court,



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Srivilliputtur, in dismissing H.M.O.P., for divorce filed under
Section 13(1)(i-a) of the Hindu Marriage Act. No costs.

09.03.2023

Index : Yes : No

Internet : Yes : No

SSL

To

- 1.The Principal District Court, Virudhunagar District
at Srivilliputtur,
2. The Additional Subordinate Court, Srivilliputtur.
- 3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.M.S.A(MD)No.54 of 2021

09.03.2023