



**CMA(MD).Nos.537 and 538 of 2017**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**RESERVED ON : 16.06.2023**

**PRONOUNCED ON : 07.09.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)Nos.537 & 538 of 2017**

Lakshmipriya

.....Appellant in both appeals

Vs.

R.Soundarapandian

...Respondent in both appeals

**PRAYER in CMA(MD).No.537 of 2017:-** Civil Miscellaneous Appeal filed under Section 28 of the Hindu Marriage Act, 1955, to set aside the order passed by the Principal District Judge, Madurai in H.M.O.P.No.1 of 2016 dated 31.01.2017 and allow this appeal.

**PRAYER in CMA(MD).No.538 of 2017:-** Civil Miscellaneous Appeal filed under Section 28 of the Hindu Marriage Act, 1955, to set aside the order passed by the Principal District Judge, Madurai in H.M.O.P.No.2 of 2016 dated 31.01.2017 and allow this appeal.



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CMA(MD).Nos.537 and 538 of 2017

For Appellant : Mr.A.Jayaramachandran  
in both appeals

For Respondent : Mr.J.Bharathan  
in both appeals

### **COMMON JUDGMENT**

#### **Factual Matrix:**

The appellant/wife had filed HMOP.No.2 of 2016 on the file of the Principal District Court, Madurai for the relief of restitution of conjugal rights.

2.The respondent/husband had filed HMOP.No.1 of 2016 before the same for the relief of divorce on the ground of mental cruelty.

3.Both the petitions were heard together and the District Judge was pleased to allow the divorce petition filed by the husband and dismissed the petition filed by the wife for restitution of conjugal rights. Challenging the orders passed in both the petitions, the wife has preferred these two appeals.

4.The respondent/husband in his petition had contended that he got married to the appellant on 07.02.2011 as per Hindu Customs and in the presence of elders at Coimbatore. They led their matrimonial life for 15 days at Cumbum and thereafter, shifted their residence to Coimbatore .



CMA(MD).Nos.537 and 538 of 2017

As a result of wedlock, a son was born to them on 03.11.2011.

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5.The respondent had alleged that the wife was picking up unnecessary quarrel right from the beginning and she was continuously stating that only because of the compulsion of her parents, she had agreed for the said marriage. She was also continuously abusing him and his family members. When the wife had left the matrimonial home to her parental house for delivery, she had taken all her jewels. After reaching her parental home, she had stopped wearing bindhi and flowers in her head and she had started following Christian religion. The wife had insisted the husband that he should convert himself to Christianity, only then she is ready for a reunion. The husband had further contended that on 03.11.2011, when he attempted to see his son, he was abused by the wife and in-laws and they did not permit him to see the son. Various attempts were made by him to settle the issue, however, the wife had not come forward to settle the issue. Several phone calls were made threatening the husband and his relatives. Because of the said phone calls, he lost his reputation among his relatives and his family members.

6.On 15.11.2011, the wife's father had abused and stabbed the husband and he was admitted to Ramakrishna Hospital, Coimbatore. An



CMA(MD).Nos.537 and 538 of 2017

F.I.R was registered by B3 Police Station, Coimbatore in Crime No.2482 of 2011 and the investigation is pending.

7.The respondent had further alleged that the wife had deserted him and because of her activities, he was put to great hardship and he felt that the matrimonial relationship cannot be continued. Therefore, a legal notice was issued by the respondent on 31.01.2012 and the same was received by the wife on 01.12.2012. However, there was no reply from the wife. Hence, he had filed a petition for divorce.

8.In HMOP.No.2 of 2016 which was filed by the wife seeking restitution of conjugal rights, she had contended that the husband and in-laws had demanded dowry and they have harassed her. She had further alleged that despite being informed the birth of the son, neither his husband nor her in-laws have come to see the child. Since the demanded dowry was not paid, the husband had registered a false criminal case as against her father. The husband was continuously beating the wife and she had contended that she is ready to join with her husband and hence, she had filed the application for restitution of conjugal rights.

9.Counters were filed by both the parties in the respective petitions disputing the prayer.



CMA(MD).Nos.537 and 538 of 2017

10.The learned District Judge had tried both the HMOPs and arrived at a finding that the wife had filed a criminal case as against 13 members of the husband's family under Dowry Harassment Act. The trial Judge had further found that the wife had initiated proceedings as against 10 members of the husband's family under Domestic Violence Act. The Tribunal further found that the wife had deposed that during pendency of the case, she has not taken the child to the husband and she has not called her husband over phone.

11.In the proof affidavit filed by the wife though she has stated that she is ready to apologise before the Court but during cross examination, she has stated those words were inserted in the proof affidavit only to create sympathy and she was not ready to seek any apology to the husband.

12.The trial Court further found that the wife has not returned back to the matrimonial home after delivery and the wife has not given any specific reason why she has not returned back to matrimonial home. The wife in her deposition has admitted that the husband came within 10 minutes from the time of delivery. Therefore, the trial Court found that the averments by the wife that neither the husband nor her in-laws have



CMA(MD).Nos.537 and 538 of 2017

turned for seeing the child is a false one. The trial Court further found that the wife had deserted the husband without any reasonable cause and proceeded to allow the divorce petition and dismissed the petition for restitution for conjugal rights. Challenging the said order, the present appeals have been filed.

**Submissions of the counsels:**

13.The learned counsel appearing for the appellant had contended that the wife wanted to live with her husband and therefore, she had filed HMOP.No.2 of 2016 for restitution of conjugal rights. The husband has not made out any case of mental cruelty as alleged in the petition. Unless the mental cruelty is to such a level, that it is not possible to continue the matrimonial relationship, divorce cannot be ordered on the ground of mental cruelty. He had further contended that the husband lodged an F.I.R as against his father-in-law and therefore, the wife had a reasonable cause to live away from the husband. The said fact cannot be considered to be desertion for granting divorce. He had further contended that the deposition of the wife has not been properly appreciated by the trial Court and after misinterpreting the said deposition, the trial Court has proceeded to grant a decree for divorce.



CMA(MD).Nos.537 and 538 of 2017

14.The learned counsel for the appellant had further contended that the husband has lodged a police complaint as against his father-in-law only because of the fact that the dowry that was demanded was not given by her parents. When a motivated false complaint has been filed by the husband to extract dowry, the same cannot be put against the wife. He had further contended that when the filing of the case by the husband is the reason for the wife to live away from him, the husband cannot take advantage of his own fault. The learned counsel had further contended that the trial Court ought not to have relied upon the order of the criminal Court made in M.C.No.1 of 2014 which is marked as Exhibit P6. The order of the criminal Court cannot be relied upon in the matrimonial proceedings for establishing cruelty or desertion. The husband has to independently prove the cruelty or desertion in order to get an order of divorce. He had further contended that except the husband, no other independent witness has been examined on his side to establish the case of alleged cruelty and desertion.

15.The learned counsel for the appellant had further contended that when the wife was beaten by the husband and subjected by cruelty by her family members, she cannot be expected to be a mere spectator. Filing of



CMA(MD).Nos.537 and 538 of 2017

complaint under Dowry Prohibition Act or Domestic Violence Act for establishing such legal rights, the wife cannot be alleged to be cruel to the husband. In fact, the husband was cruel to the wife which has resulted in lodging of these complaints. Therefore, invocation of the beneficial legislations which are meant for protecting the women cannot be considered to be a cruelty on the part of the wife towards husband. Hence, he prayed for setting aside the order of divorce and allow the appeals and pass an order for restitution of conjugal rights.

16.Per contra, the learned counsel for the respondent/husband had contended that the wife had left her parental home for delivery and a son was born on 03.11.2011. The present HMOP for divorce was filed by the husband in the year 2012 after waiting for a period of one year for the wife to return to the matrimonial home. In fact, a legal notice was sent to her on 30.01.2012 for which there was no reply from her side. The father of the wife had attempted to kill the husband by stabbing him and an F.I.R was also registered on 20.11.2011 and the husband was admitted in a Hospital for 2 days as an inpatient and the said criminal case is still pending. This will disclose animosity shown by the wife towards the husband. The learned counsel for the respondent had further contended



CMA(MD).Nos.537 and 538 of 2017

that the wife has not assigned any reason whatsoever for remaining at her parental home more than one year after she had delivered the child. He had further contended that in the application filed for restitution of conjugal rights, the wife had contended that the husband and her in-laws have never come forward to see the child after delivery. However, it has been admitted by the wife in her deposition, the husband had reached the Hospital within 10 minutes from the time of delivery. Therefore, the petition for restitution of conjugal rights has been filed with false averments.

17.The learned counsel for the respondent had further contended that in the proof affidavit, the wife had specifically submitted that she seeks apology for her action. However, during the cross examination she had admitted that the word of regret was inserted in the proof affidavit only to gain sympathy from the Court. Therefore, it is clear that the wife is not willing for a reunion with the husband. No reasons have been assigned for the said desertion. The learned counsel had further contended that the wife had lodged a criminal case as against 13 members of the husband's family under Dowry Prohibition Act. The wife had also lodged a Domestic Violence complaint as against 10 members



CMA(MD).Nos.537 and 538 of 2017

of the husband's family. Therefore, it is clear that the wife does not have any intention whatsoever to join with the husband. If really there is any harassment on the part of the husband or in-laws, the wife would have lodged a complaint only as against them and not against other members of the family who were residing away from the matrimonial home. Therefore, it is clear that the husband had suffered matrimonial cruelty in view of these two criminal complaints and an attempt made by his father-in-law to stab him. Only considering over all nature of relationship between the parties, the trial Court allowed the application for grant of divorce and dismissed the application for restitution of conjugal rights. Hence, he prayed for sustaining the order passed by the trial Court in both the appeals.

18.I have considered the submissions made on either side and perused the records.

**Discussion:**

19.The main allegation of the husband is that he had suffered matrimonial cruelty from his wife and his wife has deserted him and has not returned back to the matrimonial home after delivery. However, the wife in her counter had disputed the said allegations and prayed for



restitution of conjugal rights.

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20. According to the husband, his father-in-law had attacked him with a knife for which a criminal case has been registered as against him. However, in his deposition, the husband has admitted that when he was admitted to Ramakrishna Hospital after injuries, in the Accident Register, it has been recorded that he got injured by an iron rod. Therefore, it is clear that the allegation of the husband that he was stabbed by his father-in-law does not seem to be true.

21.As far as the allegation of desertion is concerned, it is the contention of the husband that the wife had left the matrimonial home in September 2011 and a child was born on 03.11.2011 and after that, the wife has not returned back to the matrimonial home without any reasonable cause. It could be seen from the cross examination of the wife that 12 days after birth of the child, the wife's father had reached Coimbatore and met the husband where some altercation seems to have taken place. The husband had alleged that he was stabbed during the said incident and lodged an F.I.R. Therefore, when the husband has lodged a complaint as against her father, the wife cannot be expected to come back to the matrimonial home. Therefore, the wife has got a reasonable



CMA(MD).Nos.537 and 538 of 2017

cause to stay away from the matrimonial home in view of the criminal case that has been lodged by her husband against her father.

22.In the cross examination, the wife had contended that she lodged a complaint as against her husband and other relatives numbering 11 in number under Dowry Prohibition Act. Out of these 11 persons, 2 persons are said to be Panchayatars who intervened in the matter for the purpose of mediation. Thereafter, the wife had lodged another complaint as against the husband and 10 of his family members under Domestic Violence Act and she had demanded a sum of Rs.20 lakhs towards compensation. Thereafter, the wife has filed M.C.No.1 of 2014 before the Judicial Magistrate Court, Tirumangalam seeking maintenance for herself and to the son. The Judicial Magistrate had rejected the prayer for maintenance to the wife and has granted maintenance only to the son.

23.In the proof affidavit the wife had deposed that she has not done anything as against her husband or his family members. In case, if the husband feels she had hurt them, she is ready to seek apology. However, during the cross examination, she had withdrawn the said statement and contended that those averments were inserted in the proof affidavit only to seek sympathy of the Court. Therefore, it is clear that the



CMA(MD).Nos.537 and 538 of 2017

wife was only attempting to draw sympathy from the Court and she does not really want to live with her husband.

24.It is the legal right of the wife to lodge a complaint to protect herself from any physical violence by invoking the provisions of Dowry Prohibition Act or Domestic Violence Act. The said filing of these complaints can never be considered to be matrimonial cruelty. However, even as per the deposition of the wife, she had lodged a complaint not only as against the husband and the in-laws, but also as against 11 other persons including the Panchayatars who had intervened to mediate the issue. Similarly, the Domestic Violence Act has also been invoked by the wife not only as against the husband and in-laws, but also as against other family members namely 9 other persons. The wife had left the matrimonial home in September 2011 and thereafter, she had never returned to her matrimonial home. The criminal complaints under Dowry Prohibition Act and the Domestic Violence Act have been lodged as against all the family members of the husband in the year 2013.

25.It is not known what prompted the wife to file such a complaint two years after she had left the matrimonial home. Therefore, it is clear that these complaints have been lodged with an intention to wreck



CMA(MD).Nos.537 and 538 of 2017

vengeance upon the husband for registering the F.I.R as against her father in November 2011.

26.The husband has filed the divorce petition on 09.02.2012. The wife had lodged the complaint in the year 2013. Therefore, there are no pleadings in the divorce petition with regard to this complaint. The Hon'ble Supreme Court in a judgement reported in **(2014) 16 SCC 34 ( K.Srinivas Vs. K.Sunita)** in Paragraph No.6 has held as follows:

*“6. Another argument which has been articulated on behalf of the learned counsel for the Respondent is that the filing of the criminal complaint has not been pleaded in the petition itself. As we see it, the criminal complaint was filed by the wife after filing of the husband's divorce petition, and being subsequent events could have been looked into by the Court. In any event, both the parties were fully aware of this facet of cruelty which was allegedly suffered by the husband. When evidence was led, as also when arguments were addressed, objection had not been raised on behalf of the Respondent-Wife that this aspect of cruelty was beyond the pleadings. We are, therefore, not impressed by this argument raised on her behalf.”*

27.In the present case, the wife had admitted about the police complaint in her cross examination. The complaints are lodged not only as against the husband, but also as against the other family members two years after she had left the matrimonial home. She had gone to the extent



of implicating two panchayatars who had mediated between the couple for an amicable settlement. Therefore, it is clear that the wife had lodged a police complaint on ill-advice and this has certainly caused cruelty not only to the husband but also to other family members and mediators.

28.The Hon'ble Supreme Court in a judgement reported in **(2021) 3 SCC 742 ( Joydeep Majumdar Vs. Bharti Jaiswal Majumdar)** while dealing with the dissolution of marriage on the ground of matrimonial cruelty in Paragraph Nos. 10 and 12 has held as follows:

*“10. For considering dissolution of marriage at the instance of a spouse who allege mental cruelty, the result of such mental cruelty must be such that it is not possible to continue with the matrimonial relationship. In other words, the wronged party cannot be expected to condone such conduct and continue to live with his/her spouse. The degree of tolerance will vary from one couple to another and the Court will have to bear in mind the background, the level of education and also the status of the parties, in order to determine whether the cruelty alleged is sufficient to justify dissolution of marriage, at the instance of the wronged party.....*

*12. When the appellant has suffered adverse consequences in his life and career on account of the allegations made by the respondent, the legal consequences must follow and those cannot*



CMA(MD).Nos.537 and 538 of 2017

*be prevented only because, no Court has determined that the allegations were false.....”*

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29. In the present case, even though the complaint lodged by the wife are yet to be adjudicated to be a false complaint, the adverse consequences that are faced by the husband should be taken into account. The judgement of the Hon'ble Supreme Court cited supra, lays down that the matrimonial cruelty should be such that it is not possible to continue with the matrimonial relationship or the husband cannot be expected to condone such conduct and continue to live with his spouse. The conduct of the wife in withdrawing her apology during the cross examination would also go to show that the wife is not willing for a reunion. The matrimonial relationship between the parties has reached such a level that both the parties have lodged criminal complaint against each other and the same are pending investigation. In such view of the matter, this Court is of the opinion that the trial Court has arrived at a correct finding that the husband has suffered matrimonial cruelty and it is not possible to continue the matrimonial relationship. Therefore, this Court does not find any merit in both the appeals and the same are liable to be dismissed.



CMA(MD).Nos.537 and 538 of 2017

30.In view of the above said deliberations, these Civil

Miscellaneous Appeals are dismissed. No costs.

**07.09.2023**

Index : Yes/No  
Internet : Yes/No  
NCC : Yes/No  
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To

1. The Principal District Judge,  
Madurai

2.The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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CMA(MD).Nos.537 and 538 of 2017

**R.VIJAYAKUMAR,J.**

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Pre-delivery Judgement made in  
C.M.A(MD)Nos.537 & 538 of 2017

**07.09.2023**