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C.M.A.No.2804 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.09.2024

PRONOUNCED ON: 05.06.2025

CORAM

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU
and
THE HONOURABLE MRS.JUSTICE R. KALAIMATHI**

C.M.A.No.2804 of 2019

P.Vijayakumar ... Appellant/Petitioner

-Vs-

Selvamani ... Respondent/Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 19 of the Family Court Act, 1955, to set aside the judgment and decree dated 07.02.2019 passed in FCOP No.84 of 2018 on the file of the Family Court, Namakkal (Sub-Court, Namakkal, HMOP No.54 of 2016).

For Appellant : Mr.C.Kulanthaivel
For Respondents : No appearance

JUDGMENT

(Judgment of the Court was made by Mrs.R.KALAIMATHI,J.)

The Civil Miscellaneous Appeal is preferred against the order dated



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07.02.2019 made in FCOP No.84 of 2018 on the file of the Family Court, Namakkal (Sub-Court, Namakkal, HMOP No.54 of 2016).

2.Despite the receipt of notice, the respondent neither appeared nor entered through her advocate.

3.The facts set out in the petition is stated in brief:

The marriage between the petitioner/husband and the respondent/wife was solemnized on 11.09.2014 at Kadapalli Easwaran Kovil, Namakkal, as per Hindu customary rights, in the presence of elder members and relatives of both sides. It is an arranged marriage. They do not have child. Within a month from the date of marriage, misunderstanding started between them. The respondent, without informing the petitioner would go to her parents residence. When he enquired about this issue to the close relatives of the respondent and the villagers, he came to know that the respondent had illicit relationship with her sister's husband viz., Venkatesh. At present the respondent is living with the said Venkatesh. At the time of marriage, the respondent told him



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that she completed B.A degree. She gave a false information that she had completed B.A degree. The same details are also mentioned in the marriage invitation. In fact, she did not study B.A degree. The petitioner has been living in separation since 1 ½ years. When the talk of settlement was held in the presence of relatives and elders, the respondent told that she is not interested to live with the petitioner and she wanted to live with the said Venkatesh. Hereafter, the petitioner does not have idea to live with her. Hence, petition for divorce on the ground of cruelty was filed.

4.It was contended by the respondent by way of filing counter to the effect that the respondent is in illicit relationship with her sister's husband Venkatesh and the fact that she is not interested to live with her husband are not true and are denied. Further it was contended that the fact that she wantonly deserted the petitioner is condemnable. In fact, the respondent lived with her husband only for 10 days. On the first night, the petitioner was under intoxication and the marriage was not consummated. So the petitioner is not fit for marriage life and the said fact was hidden by the elders. As this fact came to be known to everybody, urgently this petition



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has been filed. When the respondent called upon the petitioner for medical examination, he refused to undergo medical examination. The respondent is ready to live with the petitioner.

5.At trial, on the side of the petitioner, the petitioner has examined himself as P.W.1 and 4 documents have been marked. Ex.P.3 is the Medical Report of the petitioner. On the side of the respondent, the respondent has examined himself as R.W.1 and no document was marked.

6.Upon consideration, the trial Court observed that the allegations raised are not serious allegations and as to the allegation of illicit intimacy, the petitioner has deliberately failed to prove the same and dismissed the petition.

7.P.W.1 has spoken in line with the details of the petition. More so, the respondent has denied all the allegation. The allegations made by Vijayakumar are:

(i)The respondent would often go to her parents house.



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(ii)On enquiry from the close relatives and villagers of the respondent, he came to know that she was in illicit intimacy with her sister's husband Venkatesh.

(iii)The respondent is at present living with the said Venkatesh.

(iv)She gave a false information that she completed B.A degree. In fact she did not study B.A degree.

(v)During the talk of settlement in the presence of relatives and elders, the respondent told that she has not interested to live with him and she would only live with Venkatesh.

8.The sum and substance of the respondent's objection is that, the fact that she is in illicit intimacy with her sister's husband is not true. When it was enquired into by her husband, she never told him that she was interested only to live with Venkatesh. The said details are totally untrue and denied and she has also stoutly denied that it is she deserted her husband. It is her allegation that the petitioner/husband is not fit for marital life and the marriage was not consummated. When the respondent called him for medical examination, he refused to undergo medical examination.



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However, she is ready to live with her husband.

9. A careful perusal of the evidence of P.W.1 would explicate that his main allegation is that the respondent/wife would stay with her parents and they have happily lived only for a month. When a serious allegation is made, on the spouse side, it is for the person, who raises allegation to prove the said facts in the manner known to law. Of course, illicit intimacy is a stronger reason. But the petitioner has not proved the same by examining some suitable persons, as the said details have been denied by the respondent/wife. The said Venkatesh is not arrayed as 2nd respondent. It is the evidence of P.W.1 that the respondent sister's husband threatened the petitioner, for which, he did not lodge a complaint before the police station because his wife did not come to the police station and she did not give complaint. But the said fact is not mentioned in the petition.

10.As regards the respondent's allegation, it is her evidence that for 10 days, they lived as a husband and wife happily, would show that the



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marriage is consummated. Though her counter reads that her husband is impotent person and the said fact is not disclosed at the time of marriage. The details are denied to have been stated in the counter. She has stated that if he is ready to joint with her, she is ready to live with him.

11. Furthermore, she has stated that as he is impotent and in order to hide the said fact, he has filed the said petition for divorce. On the other hand, her evidence to the effect that she lived happily with him for 10 days would belie this fact. Ex.P.3 is the Medical Report of the petitioner, would show that he has undergone medical test. Therefore, the allegation put forth by the respondent to the effect that he did not come forward for undergo medical test also not correct. Primarily the petitioner's main allegation is that the respondent was having illicit intimacy with her sister's husband is not proved.

12. In the matrimonial cases, burden of proof lies on the petitioner. As regards the degree of probability, it is not beyond reasonable doubt, but, based on preponderance of probabilities.



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13.The OP was filed for divorce on the ground of cruelty.

14. As regards the word 'Cruelty', the Court has got a wider spectrum for consideration so as to apply it contextually. It depends upon the educational, social and financial background of spouse, culture, conduct of husband and wife, physical and mental weakness of the spouse, etc. The reasons are enumerative and exhaustive. It differs in each household and each person. Even deliberate and willful intention may not matter at times.

15. With the passage of time, due to the impact of, especially electronic media, the concept of cruelty is bound to change from time to time. There cannot be any fixed parameters for determining the issue of cruelty in matrimonial matters. Therefore, it is prudent to adjudicate on a case to case basis, by evaluating in a given situation. Acts of cruelty would differ from person to person and man to a woman and a broad approach is the need of the hour in matrimonial matters. In the modern era, issues have to be dealt with some latitudinarianism.



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16. Useful reference may be made as to the observations of the Apex Court in the matters of granting of divorce on the ground of cruelty in *Dr.N.G.Dastane Vs. Mrs.S.Dastane* reported in 1975 (2) SCC 326, the Hon'ble Supreme court has held that:

“27. The misconception regarding the standard of proof in matrimonial cases arises perhaps from a loose description of the respondent's conduct in such cases as constituting a “matrimonial offence”. Acts of a spouse which are calculated to impair the integrity of a marital union have a social significance. To marry or not to marry and if so whom, may well be a private affair but the freedom to break a matrimonial tie is not. The society has a stake in the institution of marriage and therefore the erring spouse is treated not as a mere defaulter but as an offender. But this social philosophy, though it may have a bearing on the need to have the clearest proof of an allegation before it is accepted as a ground for the dissolution of a marriage, has no bearing on the standard of proof in matrimonial cases.”

17. It is relevant to refer to the observations made by the Hon'ble



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Supreme Court in *V.Bhagat Vs. D. Bhagat* reported in (1994) 1 SCC 337:

“16. Mental cruelty in Section 13(1)(i-a) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.”



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18. In *Samar Ghosh vs Jaya Ghosh* reported in (2007) 4 SCC

511, the Hon'ble Supreme Court has held that:

“101. (x) 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.”

19. In the case of *Roopa Soni Vs. Kamalnarayan Soni* reported in 2023 SCC Online SC 1127 has observed that *“...the court as the interpreter of law is supposed to supply omissions, correct uncertainties, and harmonise results with justice through a method of free decision — libre recherche scientifique i.e. “free scientific research”...”*.

20. The serious allegation as mentioned supra is that she had illicit intimacy with his sister's husband and the petitioner except his oral evidence he has not taken any steps towards proving the same by



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examining suitable persons to this effect. Soon after the marriage, as the parties come from different place and from different family setup, it is not possible to understand the acts according to the expectations of other spouse. The mantra to be followed by the married couple are tolerance, mutual respect, mutual affection and trust upon each other. Petty quibbles and trifling differences in the family relationship should not be exaggerated and magnified in order to destroy the marriage, which is a sacrosanct and which is made in heaven as per the Hindu Custom.

21.The acts of cruelty have to be proved and have to be viewed from the perspective of the petitioner. We are conscious of the fact that hypersensitive approach would be fateful to the institution of marriage.

22. We are very conscious of the fact that marriage should never be discarded for flimsy reasons. Both the appellant and the respondent got married on 11.09.2014 and only for short period they lived together and thereafter misunderstanding arose and they have been in separation.

23. The petitioner has filed the petition for divorce on the ground of



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cruelty. Despite receipt of notice, the respondent (wife) neither appeared nor represented through her counsel. When the matter was posted for judgment on 03.01.2025, the learned counsel for the appellant(husband) circulated a memo containing the copy of H.M.O.P., filed by the respondent (wife) for an order of divorce on the ground of cruelty before the Family Court, Namakkal in F.C.O.P.No.68 of 2019 along with the order passed in said F.C.O.P., wherein the petition was dismissed for default for non-prosecution as the petitioner did not pursue the matter diligently. However, considering the circumstances of the case and nature of the proceedings, the Legal Secretary of District Legal Services Authority (D.L.S.A.) was directed to enquire into the said fact relevant to the above said details from the respondent (Selvamani) and to send a report to this Court.

24. As per the report of the above said Judicial Officer, the respondent filed the above said F.C.O.P.No.68 of 2019 before the Family Court, Namakkal under Section 13(1)(i-a) of Hindu Marriage Act, 1955 against her husband for an order of divorce on the ground of cruelty on the ground that after marriage they lived together at the residence of the



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respondent for 20 days as husband and wife and thereafter, her husband left Kanyakumari in order to work in a Solar Company and after a month, her husband set up the family at Kanyakumari and they lived there: every day, the petitioner/husband used to come home in the night under intoxication and he used to assault her by doubting her fidelity. As the cruelties were increasing day by day, she on intimation to her father, was taken to her father's residence by her father on 20.03.2015 and for the past four years, she is in separation. The petitioner has put-forth fault theory. The husband has presented some instances.

25. From both sides evidences, we are impressed by the consideration that the marriage has turned down beyond repair. If that the the case, the law has to take note of that fact as it would be harmful to the society if it is not taken note of. As regards the marriage between the petitioner and the respondent it has become a fiction, though the Hindu Marriage is sacrosanct As the marriage has been wrecked, the said fact has to be recognised.



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26. Though the respondent/wife has stated in her counter that she wants to live with her husband, at a later point of time, she has taken out a original petition for an order of divorce on the ground of cruelty would explicate that both are not interested to continue their matrimonial bond.

27. In consideration of the above said details, we are of the considered view that it is better to severe the legal tie between the petitioner and the respondent. In the given facts and circumstances, this Civil Miscellaneous Appeal is allowed and the judgment and decree dated 07.02.2019 passed in F.C.O.P.No.84 of 2018 by the Family Court, Namakkal (Sub-Court, Namakkal in H.M.O.P.No.54 of 2016) is set aside and the order of divorce is granted. Sequel to this, the marriage held between the appellant/petitioner and the respondent/wife on 11.09.2014 at Kadapalli Easwaran Kovil, Namakkal, stands dissolved. There is no order as to costs.

(J.N.B.J.) (R.K.M.J.)
05.06.2025

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



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To

1.The Family Court,
Namakkal.

2.The Sub-Court,
Namakkal.

**J.NISHA BANU, J.,
and
R. KALAIMATHI, J.,**



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