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C.M.A.No.331 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.09.2024

Pronounced on : 21.02.2025

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.331 of 2023

K.Tamilselvan

...Appellant

vs.

K.Vanitha

...Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 19 of Hindu Marriage Act, against the judgment dated 15.02.2022 made in H.M.O.P.No.9 of 2020 by the Family Court, Tiruvannamalai.

For Appellant : Mr.D.S.Ramesh

For Respondent : Mr.C.Prabhakaran

JUDGMENT

(Judgment was authored by Mrs.R.Kalaimathi, J.)

This Civil Miscellaneous Appeal has been preferred against the



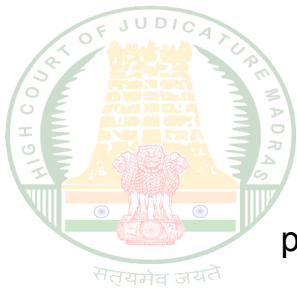
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order of dismissal passed in H.M.O.P.No.9 of 2020 dated 15.02.2022 by the Family Court, Tiruvannamalai.

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2. The details of the case as set out in the petition are stated in brief:

- (a) The marriage between the petitioner and respondent was solemnized on 08.04.2012, as per the Hindu rights and customs, in the presence of the relatives and elders at Tiruvannamalai, G.M.Thirumana Mandapam. The petitioner was working as a Police in C.R.P.F. in the State of West Bengal. After his marriage, he came on leave for three times to his native and stayed at his residence along with the respondent and went back to duty. Three months before, he got transferred to Coimbatore and used to come every Friday evening and go back from his native on Sunday night. At that time, during the night hours, the respondent did not cooperate for consummation; she used to abuse him in filthy language and shout at him.
- (b) Whenever he contacted the respondent through phone, her cellphone was in switched-off mode. When the petitioner contacted his parents as to why her cellphone was in switched-off mode, he was told that she was talking with some third person by using some other sim card. When this was intimated to the respondent by the



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petitioner's father and mother, she abused them in filthy language and beat them.

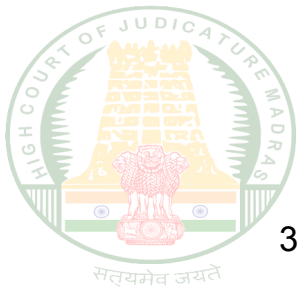
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(c) Further more, fifteen days after their marriage, one Mani contacted the petitioner through cellphone and told him that he was in love affair with the respondent and he was in illicit intimacy with her. On 13th of August 2012, when a relative of the respondent/wife one Ayyappan came to his house in order to invite for his housewarming function, the respondent was talking with the said Ayyappan in the kitchen. When the petitioner's mother, Kaladevi, who had gone outside, came to the kitchen, she saw the respondent was hugging Ayyappan and she was romantically talking with the said Ayyappan. In the month of Aadi, as the respondent's parents had invited for pooja, the petitioner's mother went to the respondent's mother's house. When the mother of the petitioner went to the respondent's parents home, the respondent came out of the bedroom and the said Ayyappan was lying on the bed. Having seen the mother of the petitioner, the said Ayyappan went out immediately. His mother came to know that the respondent also had an illicit intimacy with the said Ayyappan and she used to talk with Mani for a long time. Because of the same, she refused to consummate with the petitioner by creating problems.



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(d) When he was on duty, the respondent had a habit that without informing the parents of the petitioner, went out with third person in the motor cycle and came back after so many hours or after 1 or 2 days. When the petitioner had come on leave during the month of November, on 29.11.2012, before he proceeded for duty, the respondent abused him in filthy language and created problems. On the next day, i.e., 30.11.2012, the respondent abused his mother and pushed her down, due to which her mother sustained injury on the back of her head and she was taken for treatment to Cuddalore Hospital. Even on 13.12.2012, when he was on duty, the respondent, without giving intimation to his parents, went out in the motor cycle with Ayyappan and she stayed at her mother's residence in order to have illicit intimacy with Ayyappan and Mani. Therefore, the petitioner is not interested to live with the respondent and there is no chance for living along with her. Hence, a legal notice was caused to be issued on 02.01.2013, which was received by her. But, she did not send any reply notice. Therefore, he filed the petition for grant of divorce under Section 13(1)(ib) of the Hindu Marriage Act, 1955.



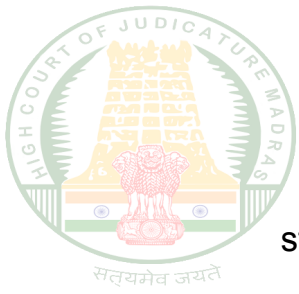
3. The details of the counter of the respondent/wife are given in

brief:

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(a) As the petitioner was working in Calcutta, he requested to get a sum of Rs.35,000/- for his transfer and the respondent's parents arranged for the same. The respondent requested the petitioner and his parents to take the respondent with the petitioner to Coimbatore; But, the petitioner's mother did not permit her to go to Coimbatore. The facts that she was in illicit intimacy with Ayyappan and Mani that she avoided sexual intercourse with her husband are false stories. It has also not been proved that her phone was in switched-off mode and she was speaking to another person through some other sim card. As the respondent's parents were using Airtel sim card, if the respondent uses Airtel, it would cost only Rs.0.10 per minute. Hence, the parents of the respondent arranged one mobile phone for her use. She comes from a decent and cultured family and she respects elders and she does not speak bad words.

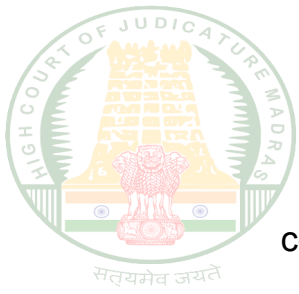
(b) It is further averred that the said Mani is her relative and the marriage proposal from Mani's family was rejected by her as he did not study and he has no employment. The petitioner created himself different stories and connected the respondent with the



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stories unnecessarily. During the first week of December 2012, the respondent talked with her parents to take her from the matrimonial home as she was badly ill-treated. Thereafter, the petitioner came with his uncle, sister and sister's husband for convincing the respondent and her family members by stating that he would convince his mother and take the respondent to Coimbatore. Believing his words, the respondent came back to her matrimonial home. In the month of January 2013, the respondent went to write her examination with the permission of the petitioner with her brother. When she returned back to her matrimonial home, after writing examination, the door was kept in lock and key and hence, she stayed at nearby relatives house. Thereafter, when her relatives rang up to the petitioner's mother, she stated that she had to go to her mother's house and she could only return back, if their demands are met with. Therefore, the respondent returned back to her mother's house. Thereafter, she received a legal notice from the petitioner. When the respondent and her family members came to the petitioner's house, the respondent was allowed neither to respond nor to live in the petitioner's house. Instead, the petitioner's mother and father spoke in filthy language and beat the respondent's family members. Therefore, the respondent lodged a



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complaint before the Police. In order to take revenge against the respondent, this vexatious petition for divorce was filed.

4. At trial, on the petitioner's side, the petitioner and his father have been examined and five documents have been marked. On the respondent side, the respondent examined herself as R.W.1. The legal notice issued to the respondent is Ex.R1.

5. Upon consideration, the Family Court dismissed the petition by holding that the petitioner has not proved the petition averments to the effect that she was in illicit intimacy.

6. The learned counsel for the appellant/petitioner would, vehemently contend that the petitioner has raised so many acts of cruelty to support his case. He has examined his father as P.W.2. Thereby, he has proved the petition details and therefore, the order of dismissal passed by the Family Court is in correct and prayed to allow the appeal.

7. Per contra, the learned counsel for the respondent would, strenuously, argue that there is no *iota* of truth in the allegations raised in the petition. It is true that she was demanded dowry from the petitioner's side and as it was a persistent demand, she lodged a complaint before the



Police. He would further contend that the allegations raised in the petition should have been duly proved in the manner known to law. Therefore, the Family Court has rightly passed an order of dismissal and sought for dismissal of this appeal.

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

9. On a bare perusal of the petition, the petitioner has been filed under Section 13(1)(ib) of the Hindu Marriage Act, 1955, for an order of divorce on the ground of desertion. But on a careful perusal of the petition it shows that the petition has been filed for an order of divorce on the ground of cruelty.

10. 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



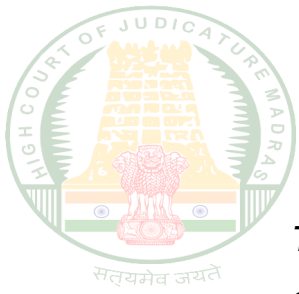
may not matter at times.

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11. With the passage of time, due to the impact of, especially electronic media, the concept of cruelty is getting changed 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.

12. 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.



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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.”

13. It is relevant to refer the observations made by the Hon-ble Supreme Court in **V.Bhagat Vs. D. Bhagat** reported in **(1994) 1 SCC 337**:

“16. Mental cruelty in Section 13(1)(ia) 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



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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.”

14. 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.”



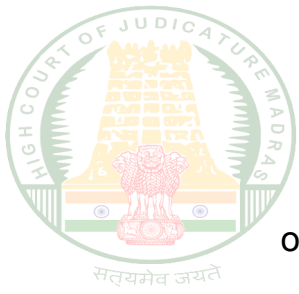
WEB COPY 15. In the case of **Roopa Soni Vs. Kamalnarayan Soni** reported in

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...”

16. The marriage between the petitioner and respondent had taken place on 08.04.2012 as per the Hindu rights and customs, in the presence of both sides/relatives and elders at Tiruvannamalai, G.M. Thirumana Mandabam. The petitioner was working as a C.R.P.F Police in the State of West Bengal at the time of marriage and thereafter, he got transferred to Coimbatore. As per the evidence of P.W.1, he has raised very many allegations on the ground of cruelty as mentioned below:

- i. The respondent/wife did not cooperate with him for consummation, rather she used to abuse and shout at him.
- ii. Whenever the petitioner tried to contact the respondent through cellphone, her cellphone was in switched-off mode and on an enquiry from his parents, he came to know that she was using some



other sim card and was often talking with some other persons.

- iii. Because of this, she shouted at his parents, beat them and created problems.
- iv. The respondent had illicit intimacy with one Mani and she was talking with him often through cellphone using some other sim card.
- v. One day, when the petitioner's mother went out and returned to his house, she saw the respondent was talking romantically with one Ayyappan by hugging him. When the petitioner's mother went to the respondent's house, on one occasion, she saw the respondent came out from the bedroom and the said Ayyappan was lying on the bed and having seen the petitioner's mother, the said Ayyappan went out.
- vi. The respondent, without intimating the parents of the petitioner, used to go out with third persons in the motor cycle and return back after so many hours or after 1 or 2 days. On 29.12.2012, the respondent shouted at the petitioner in filthy language and created problems. The respondent pushed down his mother and she sustained head injury. For these reasons, he has filed this petition for an order of divorce.

17. Whereas, the respondent has denied all the details alleged by



the petitioner by stating that the petitioner's parents were persistently demanding her to get eight sovereigns of gold. The said Ayyappan is her maternal aunt's son. On receipt of legal notice of the petitioner, the respondent went to the residence of the petitioner. As she was not permitted to enter into the matrimonial home, she lodged a complaint before All Women Police Station. As she lodged the complaint, in order to take vengeance, the divorce petition was filed with false stories.

18. The petitioner has examined himself as P.W.1. He has filed his proof affidavit in line with the details of the petition. During the cross-examination, P.W.1 would state that his wife was found to be hugging with one Ayyappan and was romantically talking with him. He has stated in the legal notice that both of them were talking. When he was posed a question whether he has stated the name of the persons with whom his wife alleged to have gone in bike, he has answered that he did not know the name of the persons. He has also stated that his mother and the father told about these details to him. When he was posed a question to the effect that whether he is ready to accept the respondent, he has answered that as the respondent had lodged a dowry complaint and they were sent to Prison and thereafter, the said case ended in acquittal, he is not interested to live with her.



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19. As mentioned supra, though the petition has been filed for an order of divorce on the ground of desertion, by going through the details of petition, it is clear that the petition has been filed for divorce on the ground of cruelty. The law is well settled that mentioning of wrong provision of law is not fatal to the case of the petitioner.

20. The allegations raised in the petition by the petitioner are very serious allegations against the respondent. The allegations have to be proved by the petitioner in the manner known to law. It is relevant to note that all the above illicit allegations have been denied by the respondent as not true.

21. Apart from examining himself, the petitioner has also examined his father as P.W.2. He has also supported the case of his son. From the evidence of P.W.2, it explicates that as promised by the respondent's father, jewels were not given in full and for that reason, the petitioner has raised some issues and she went out of matrimonial home. When she returned back to matrimonial home, she was not permitted to enter into the matrimonial home. For that, P.W.2 would state that as the respondent has gone out of the matrimonial home without the permission of the parents of



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the petitioner, she was not permitted to enter into the matrimonial home.

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22. It appears that the petitioner had been working as C.R.P.F. Police in the State of West Bengal, at the time of filing of the petition. Thereafter, he was transferred to Coimbatore. The respondent was living at her matrimonial home along with mother and father of the petitioner, who are doing agriculture. On the petitioner's side, though the petitioner and his father have been examined as witnesses, the allegations raised in the petition to the effect that the respondent had illicit intimacy with some persons, as the main allegations, remains unproved.

23. The allegations put forth by the appellant/husband to the effect that the respondent/wife was found with third person on her parents residence, that too to state that the said person was lying on the bed are uttered to disrepute to core not only upon the respondent, but on her family members. Had it been true, the petitioner's mother either should have shouted at her daughter-in-law or her family members. Nothing of that sort said to have happened would go to show that these details are weaved by the husband.

24. We are of the considered view that because of the demand of



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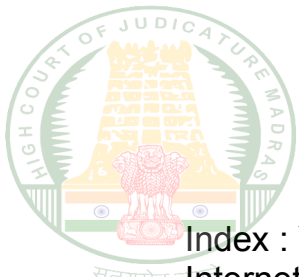
dowry by the parents of the petitioner in the absence of the petitioner as he was working elsewhere, misunderstanding has become very wide and the respondent without no other option has gone to her parents home. When she returned back to matrimonial home with her parents, as P.W.2 has stated, she was not permitted to enter into the matrimonial home. Thereafter, the relationship is so strained between the petitioner and respondent. The allegations raised in the petition have been seriously refuted by the respondent. In fact, the allegations raised in the petition are not proved by the husband. We are of considered view that the petitioner is carried away by the ill-advice of his near ones.

25. In any event, as the allegations raised in the petition have not been proved by the petitioner and we do not find any good reason to disturb the finding of Trial Court. We also do not find any perversity or infirmity in the finding of the Family Court.

26. Based on the aforesaid discussions and observations, this Civil Miscellaneous Appeal stands dismissed. No costs.

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

21.02.2025



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Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

Neutral Citation Case: Yes/No

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To

1. The Judge, Family Court, Tiruvannamalai
2. The Section Officer,
VR Section,
High Court, Madras

J.NISHA BANU, J.

and

R.KALAIMATHI, J.

apd

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