



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2025

CORAM

**THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI**

**C.M.S.A.No.2 of 2025**

V.Pichathurai

...Appellant

Vs

Sudha @ Thaiyalnayagi

...Respondent

**PRAYER**

Civil Miscellaneous Second Appeal filed under Section 28 of HMOP Act r/w Section 100 of CPC, against Judgment dated 29.07.2024 in C.M.A.No.7 of 2020 and Cross Objection in C.M.A.No.7 of 2020, on the file of the District Court at Mayiladuthurai, reversing the order in H.M.O.P.No.41 of 2016 dated 27.02.2020 on the file of Principal Sub Court, Mayiladuthurai.

For Appellant: Mr.V.Neethidurai

For Respondent: No appearance



## **ORDER**

Challenging the findings of the First Appellate Court, the appellant/husband has preferred this appeal.

2.Heard learned counsel for the appellant and perused the materials available on record. Though notice has been served and the name of the respondent has been printed in the cause list, there is no representation either in person or through counsel.

3.For the sake of convenience, the parties will be referred to as per their ranking before the lower Court.

4.The case of the appellant:

The appellant herein is the petitioner in H.M.O.P.No.41 of 2016 as well as the respondent in C.M.A.No.7 of 2020. The petitioner/husband filed H.M.O.P.No.41 of 2016 before the Principal Subordinate Judge, Mayiladuthurai



praying for grant of divorce on the ground of cruelty and desertion from the respondent/wife. According to him, he married the respondent on 08.11.2000 as per Hindu Rites and Customs. Out of the wedlock, a male child was born named Harivijay. The boy is in the custody of the respondent. The respondent insisted the petitioner bring her mother to keep with them. The petitioner refused her proposal, thereby frequent quarrels arose between the parties. The petitioner is working as Sub Inspector of Police at Chennai. Due to misunderstanding, the respondent left the matrimonial house and filed a private complaint before the Judicial Magistrate No.1, Mayiladuthurai against the petitioner in C.C.No.521 of 2001 for dowry harassment and also sent legal notice to the petitioner to return sridana articles and also claimed delivery expenses. The respondent filed a suit in O.S.No.148 of 2002 for claiming damages against the petitioner. On 05.09.2003, the respondent preferred another complaint against the petitioner before the Superintendent of Police, Nagapattinam and a case was registered in Crime No.8 of 2003 on the file of All Women Police Station, Mayiladuthurai. Thereafter, the matter was compromised between the parties based on the advice of the Court. After that,



the respondent treated the petitioner with cruelty right from the date of marriage, she used to scold the petitioner with filthy words even for petty matters. Therefore, the petitioner was put to utmost mental cruelty and untold agony. Then, the respondent has deserted the petitioner for a continuous period of more than 7 years. Therefore, he prayed for divorce on the ground of cruelty. However, he paid monthly maintenance of Rs.5,000/- to the respondent and her minor son as per the order passed in M.C.No.48 of 2009 dated 03.09.2014.

#### 5.The case of the respondent:

The respondent herein is the respondent in H.M.O.P.No.41 of 2016 as well as the appellant in C.M.A.No.7 of 2020. At the time of marriage, the respondent was given Rs.25,000/- to the petitioner to buy a two wheeler and 12 sovereigns of jewels to the respondent and 3 ¼ sovereigns of jewels to the petitioner and seer articles, and all of them are in possession of the petitioner. After the marriage, the petitioner asked dowry from the respondent. The petitioner used to beat and harass the respondent who was pregnant and then drove her away from home. The respondent gave birth to a boy on 21.07.2001



and the petitioner did not come to see the child. She found it difficult to run the family and hence, she sent a legal notice regarding maintenance. The petitioner had replied that the child was not born to him and therefore, he did not pay the maintenance expenses. Since the petitioner doubted the birth of the child born to them, the respondent underwent a DNA Test. DNA tests confirmed that the child was born to the petitioner and the respondent. Since the petitioner demanded dowry from the respondent, she was forced to initiate proceedings. Due to criminal proceedings, he was suspended from service. Thereafter, he demanded a reunion in order to escape from the action taken by the department. On the assurance given by the petitioner, the respondent withdrew all the cases filed by her. After that, the petitioner did not take care of the respondent and child. The petitioner made a false allegation that the respondent had an illegal relationship with her sister's husband. But the respondent wants to live with the petitioner.

6.Learned counsel for the appellant submitted that the Trial without considering the fact that the appellant was ready and willing to reunion with the



respondent, erroneously granted divorce on the ground of separation for the past 19 years. The Trial Court held that there is no chance of reunion between the petitioner and respondent after 19 years and also held that the respondent has caused cruelty to the petitioner by way of desertion and the Trial Court granted divorce. Learned counsel further submitted that the First Appellate Court failed to take note of the entire fact and erroneously set aside the findings of the Trial Court, which is not sustainable.

7.Before the Trial Court, the petitioner was examined as P.W.1 and 12 documents were marked as Exs.P1 to P12 on the side of the petitioner. On the side of the respondent, the respondent was examined as R.W.1, Mrs.Pramavathi was examined as R.W.2, Mr.Harish was examined as R.W.3 and Mr.Pazhani was examined as R.W.4 and 4 documents were marked as Exs.R1 to R4.

8.After considering the oral and documentary evidence, the Trial Court has come to the conclusion that for the past 19 years both have been residing separately, which amounts to cruelty and on that ground divorce granted.



Challenging the said findings, the respondent wife preferred an appeal before the District Judge, Mayiladuthurai.

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9.The First Appellate Court held that the desertion and cruelty are not committed by the wife and the same is committed by the husband and the wrongdoer cannot claim relief on the basis of wrong done by him. The husband only deserted the wife and treated her with cruelty. Even though the husband is working as a Sub Inspector of Police and earning more than sufficient salary, he has not paid the maintenance to the wife as well as the son and he has not taken care of the education of the son and decided to cut them off from his life, the same cannot be entertained. The husband deserted the wife and treated her cruelty and he only deserted the wife and due to his neglect, the wife is unable to continue the marital bond and she is willing to continue the marital bond for the welfare of the son. The First Appellate Court further held that the Trial Court without considering all these factors granted divorce to the husband on the ground of cruelty, which is wrong and for the said reason, the order of the Trial Court was set aside and the appeal was allowed.



10. Admittedly, the respondent married the petitioner on 08.11.2000 as per Hindu Rites and Custom. Out of the wedlock, a male child was born named Harivijay. Due to misunderstanding, the respondent left the matrimonial house and filed a private complaint before the Judicial Magistrate No.1, Mayiladuthurai against the petitioner in C.C.No.521 of 2001 for dowry harassment and also sent a legal notice to the petitioner to return sridana articles also claimed delivery expenses. The respondent filed a suit in O.S.No.148 of 2002 for claiming damages against the petitioner. On 05.09.2003, the respondent preferred another complaint against the petitioner before the Superintendent of Police, Nagapattinam and a case was registered in Crime No.8 of 2003 on the file of All Women Police Station, Mayiladuthurai. Thereafter, the matter was compromised between the parties based on the advice of the Court.

11. This Court is of the view that the Trial Court has rightly come to the conclusion for the past 19 years both have been residing separately and which amounts to cruelty and on that ground, divorce is granted. However, the



respondent wife is entitled for the maintenance from the appellant/husband which is not in dispute and she is entitled to claim maintenance in the manner known to law.

12.Considering facts and circumstances of the case and the submission made by the learned counsel for the appellant, this Court is inclined to set aside the order passed by the Principal District Court, Mayiladuthurai and accordingly, the judgment and decree dated 29.07.2024 passed by the Principal District Court, Mayiladuthurai is set aside.

13.With the above directions, this Civil Miscellaneous Second Appeal is allowed on the ground of cruelty. No costs.

07.08.2025

Index:Yes/No

Speaking/Non-speaking order

Internet:Yes

Neutral Citation:Yes/No

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**T.V.THAMILSELVI, J.**

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To

1.The District Court,  
Mayiladuthurai.

2.The Principal Sub Court,  
Mayiladuthurai.

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