



C.M.S.A(MD)Nos.3 & 7 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reserved	05/11/2025
Date of Pronounced	12/12/2025

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.S.A.(MD)Nos.3 & 7 of 2021

C.M.S.A.(MD)No.3 of 2021

T.Lavanya : Appellant/Respondent/Respondent

Vs.

Srinivasa R.Reddy : Respondent/Appellant/ Petitioner

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act r/w. Section 100 of CPC, to set aside the judgment made in HMCMA.No.35 of 2019 dated 17.09.2020 on the file of the Principal District Court, Theni reversing the Order and decretal order dated 19.09.2019 made in HMOP.No.77 of 2010 on the file of the Subordinate Court, Theni and allow this Civil Miscellaneous Second Appeal.

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C.M.S.A.(MD)No.7 of 2021

T.Lavanya

: Appellant/Respondent/ Respondent

Vs.

Srinivasa R.Reddy

:Respondent/Appellant/Petitioner

PRAYER: Civil Miscellaneous Second Appeal filed under Section 28 of the Hindu Marriage Act r/w. Section 100 of CPC, to set aside the judgment made in HMCMA.No.34 of 2019 dated 17.09.2020 on the file of the Principal District Court, Theni reversing the Order and decretal order dated 19.09.2019 made in HMOP.No.91 of 2015 on the file of the Subordinate Court, Theni and allow this Civil Miscellaneous Second Appeal.

In both cases

For Appellant : Mr.M.Killivalavan

For Respondent : Mr.D.Nallathambi

COMMON JUDGMENT

The Appellant/wife has filed these Civil Miscellaneous Second Appeals against the judgment dated 17.09.2020 passed in



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HMCMA.Nos.35 & 34 of 2019 on the file of the Principal District Court, Theni reversing the Order and decretal order dated 19.09.2019 made in HMOP.Nos.77 of 2010 and 91 of 2015 on the file of the Subordinate Court, Theni.

2. The case of the petitioner / husband in both petition in brief.

(a)The marriage of the Petitioner and the Respondent was solemnized on 08.02.1996 at Thirumala, Andhra Pradesh as per the Hindu rites and customs. The Petitioner is working as a District Forest Officer in Theni District. The Respondent is a house wife. Out of lawful wedlock on 05.08.1997 a male child by name Mathav Reddy was born to the Respondent/Wife.

(b) During the year 1999, the Respondent/Wife developed illicit intimacy with one Babu of Kodaikanal and the Respondent. A female child was born as a result of her illegal intimacy with the said Babu. On coming to know of these facts, both the Petitioner & the Respondent mutually agreed to separate . Then they have executed a unregistered Consent Divorce Deed on 24.01.2002.

(c) The Respondent beseeched Petitioner that she would



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mend her behaviour in future. Believing her assurance ,the petitioner permitted the first respondent to reside with him from then onwards .

Subsequently, the first respondent wife developed an intimate relationship with one Sahul Hameed, 2nd Respondent and they have been continued their affair for the past 1 ½ years without the knowledge of the Petitioner. Earlier,the 2nd Respondent was employed as a driver under the Petitioner. The Petitioner had gone to Chennai on official duty on 24.04.2010 and returned on 26.04.2010. On his return he found that the the 1st Respondent and the house hold articles were missing from the matrimonial home. On making discreet inquiries he came to know that 1st and 2nd Respondent were residing together at Allinagaram, Theni District. Thereafter, the Petitioner lodged a police complaint on 01.06.2010. The 1st Respondent is now openly living with 2nd Respondent leading a life of adultery. The conduct of the Respondent has caused mental agony to the Petitioner and such acts amount to cruelty and adultery. Hence, this petition .

3. The case of the respondent/wife in both the petitions in brief:

(i)The respondent/wife disputed the allegation contained in



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the petition submits t. She contended that the Petitioner is a Homosexual.

The Petitioner's activities are well known to second respondent as well as one Babu who were working under him as drivers. The 2nd Respondent in fact advised him to undergo psychological treatment . It is the Petitioner taken a house at Allinagaram for lease and asked the Respondent to live in that house. The Respondent was sent to the above said house with house hold items by the Petitioner on 23.04.2010 . The Petitioner under the instigation of his mother subjected the respondent to harassment and demanded lakhs of money as dowry. The Respondent's father was a multimillionaire at Rajamundry. After the demise of the father-in-law of the respondent/Wife, it is alleged that the petitioner fabricated a story connecting her with 2nd Respondent with a driver who was worked in the petitioner's office and spread defamatory statements against her. The petitioner disputed the paternity of the daughter. Petitioner had also lodged a complaint against the 2nd Respondent Sahul Hameed driver of the Forest Department that the Respondent/Wife was kidnapped and the house hold articles were stolen by the said Sahul Hameed. The second Respondent was therefore charged under Sections 363, 379, 498 IPC by the Theni Allinagaram Police. The said Sahul Hameed's family members approached the 1st Respondent for



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filing an affidavit to the court with the real facts. So, the

Respondent/Wife has filed an affidavit describing the real facts.

Consequently, the petitioner developed hostility towards the respondent.

Her signature was obtained on blank papers without permitting her to

read or understand the contents of the documents got signature in the

plain papers forcefully without allowing her to read the contents of the

documents. The respondent was driven out of the matrimonial home by

the petitioner to bring additional dowry. Later on, at the instance of the

Mother-in-law of the respondent, the Petitioner filed H.M.O.P. No.

77/2010 for divorce. The respondent also filed petition in HMOP.No.9 of

2015 for restitution of conjugal rights as she intended to join with the

petitioner

4. Before the trial Court, on the side of the petitioner/husband, P.W.1 to P.W.7 were examined and Ex.P.1 to Ex.P.6

were marked. On the side of the respondent/wife, R.W.1 and R.W.2 were

examined and Ex.R.1 was marked. Ex.X1 to Ex.X6 were marked.

5. The trial Court, after considering the evidence and records, allowed the petition filed by the respondent/wife for restitution



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of conjugal rights and dismissed the petition filed by the petitioner/husband for divorce by a common order. Aggrieved by the said common order the husband filed HMCMA.Nos.34 and 35 of 2019. The first appellate Court, after considering the evidence and records, allowed both the appeals. Aggrieved over the same, the wife has preferred these Civil Miscellaneous Second Appeals with the following among other grounds :

(a) That the 1st Appellate Court failed to see that though the husband pleaded cruelty, he has not specifically pleaded as to which activity of the appellant-wife caused mental cruelty to him either in the petition or in his deposition as PW1. In the absence of clear act of cruelty, it is improper for the Lower Appellate Court as to give a finding as to cruelty.

(b) That the 1st Appellate Court ought not to have taken allegations of homosexual person into consideration to decide the factum of cruelty, since the respondent-husband in Cross examination admitted that NEWS published about him as he is interested in homo sexuality (திருநங்கை பிரியர்) and he did not initiate any action against the editor or the publisher for such publication. Thus, the allegations of homosexual person substantiated in view of admission of the respondent-husband and



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so same cannot amount to cruelty. Hence, the Lower Appellate Court was not correct in law in deciding the cruelty on basis of criminal complaint filed against the respondent-husband and the allegations of homosexual person.

(c) That the 1st Appellate Court is erroneous in applying on the judgment reported in 2007 (4) SCC 511 to the facts of the present case as the respondent-husband only pleaded false allegations without particulars of alleged adultery and erred in holding that the respondent had proved the factum of cruelty without assigning any reasons to arrive such a conclusions.

(d) That the fair order and decretal order of the Courts below are liable to be set aside and hence, the learned counsel for the appellant prayed to allow these Civil Miscellaneous Second Appeals.

6. This Civil Miscellaneous Second Appeal was admitted on the following substantial questions of law:-

i) Whether the Lower Appellate Court is correct in arriving at different findings on the issues framed by the Trial Court without adverting to and discussing the findings of the Trial Court?



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ii) Is the Lower Appellate Court justified in concluding that the allegations stated in the criminal proceedings initiated by the Appellant herein against her husband unsubstantiated allegations especially when those criminal proceedings were withdrawn and not reached to its logical end to decide the factum of cruelty?

7. For the sake of convenience, the parties are referred to herein, as their own ranking as before the Trial Court.

8. The respondent/husband filed the divorce petition under Sections 13(1)(i) and 13(1)(i-a) of the Hindu Marriage Act, 1955 seeking divorce on the ground of cruelty and desertion. The appellant/wife filed a petition for restitution of conjugal rights under Section 9 of the Hindu Marriage Act.

9. The learned counsel for the appellant contended that according to the respondent, the appellant was leading an immoral life and had developed an illegal intimacy with the respondent's driver and a



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female child was born out of such relationship. At his insistence, the blood samples of the appellant, her husband/respondent and the female child were collected and sent for DNA test. The respondent had initiated steps to obtain the DNA report. However, he did not produce the expert report nor he examined the expert. On the other hand, the appellant produced the DNA report as Ex.R6 in which it was confirmed that the respondent is the biological father of the female child and therefore the allegations of adultery was not made out.

10. Further, the respondent/husband relied upon the a Divorce Deed Ex.P1 which is not valid in the eyes of law. The witnesses who signed the deed are his subordinates. The appellant being an innocent lady unaware of the contents of the document signed it without understanding its nature. Hence, the document is liable to be rejected.

11. He further contended that on the side of the petitioner, two witnesses were examined as PW2 to P.W.4, who are none other than his own subordinates in order to support his case. All the witnesses have made false allegations against the appellant. The respondent has failed to examine any independent witness to prove the adultery.



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12. He further contended that it was the respondent who was leading immoral life and upon being confronted about the same, he instituted the divorce petition by levelling false allegations. He further contended that on the side of the respondent, the wife/appellant was examined as R.W.1 and the expert who had issued the DNA test report has been examined as RW2. In fact the female child was educated and sent to abroad by the respondent .Even today, the appellant is willing to resume marital life with the respondent for the sake of their children.

13. The first Appellate Court without considering the material on record, set aside the order of the trial Court. The said finding is perverse and liable to be interfere with and he also prayed that the order of the trial Court to be upheld.

14. The learned counsel for the respondent contended that the appellant/wife made false allegations against her husband by describing him as a homosexual person and further alleging that he had forced her to stay her at Allinagaram situated at Theni. She made further false alleged that at the instigation of husband's mother demand for course of rupees was made



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15. In her counter she stated that she had no relationship with the second respondent and knew him, as a driver. He further contended that Ex.P4 was filed by the husband as against the Sahul Hameed alleging that he had kidnapped his wife and certain house hold materials. The said Sahul Hameed filed anticipatory bail before this High Court, in which the wife / appellant filed an affidavit admitting that she had close acquaintance with said Sahul Hameed and his family members. In the third party affidavit she made unnecessary allegations against the respondent by stating that he is a homosexual person but the said allegation was made without any proof which amounts to mental cruelty. A charge sheet was filed under Section 498 against the second respondent, since he was died in the year 2012, the charge against him was abated and was closed.

16. Further the appellant had also filed Ex.P.2 complaint before the All Women Police Station against the family members alleging that the petitioner's mother had demanded dowry, however, the complaint was closed as mistake. Further more she also filed a complaint before the Judicial Magistrate under the Domestic Violence act against the husband



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and his family family members which was. Subsequently not pressed by her. Further Ex.P.1 is the consent divorce deed filed by the husband, which was allegedly executed, in the year 2001. However, the appellant stated that she was not aware the contents of the said document . However, during cross examination she admitted that she came to know about the divorce deed three years after the husband had obtained her signature . Nevertheless, she she did not file any complaint against her husband for having falsely obtained her signature. Though they have entered into an agreement for divorce, both were reunited and living together. However, she developed illegal intimacy with the second respondent and deserted him which amount to cruelty. Therefore, the husband filed the divorce petition.

17. The learned counsel for the respondent, therefore, stated that she had filed a restitution of conjugal rights only in the year 2015, after 5 years from the date of divorce petition filed by the petitioner. The husband clearly proved the cruelty and therefore, the 1st appellate Court reversed the findings of the trial Court and dismissed the restitution of conjugal rights filed by the wife which need no interference and prays to dismiss the Civil Miscellaneous Second appeal.



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18. Heard the learned counsel on either side and perused the materials available on record.

19. The learned counsel for the appellant stated that the allegation of adultery was based on information received from third party, but the respondent has failed to establish the same. The petitioner sought for divorce on the grounds of cruelty and adultery. The husband examined PW3, PW4, who were employed as watchman, and Gardeners in the marital residence of the petitioner and the respondent. They categorically stated that, the husband, the petitioner used to leave the residence for purpose of training and other official duties. At that time, the respondent wife used to have intimate relationship with the second respondent. They further contented in April 2010, the appellant, wife left the matrimonial home taking her all the household articles and allegedly left with second respondent. Soon after, the husband, lodged a complaint on 11.06.2010 in crime number 1527/2010 and the same was registered by the Inspector of Police, Theni police station under Sections 363, 498, 379 IPC against the second respondent. It is admitted that the second respondent was arrested pursuant to the said complaint, and was subsequently placed on suspension from his service. Further, the said



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allegation was supported by PW5, Tamilarasan, in whose house the appellant was residing and entered into a lease agreement under exhibits P.12. PW5 clearly stated that, he had entered into a lease agreement only with the appellant, and that he had never met the respondent/Husband during her stay. PW5 also clearly stated that the appellant was residing in the house from June 2009 to July 2010. But according to the appellant it was the respondent who had arranged the said house as his official quarters were under repair. However, PW3 categorically deposed that the appellant had left the house at a time when the respondent was not present. Even if the statement made by the appellant be true respondent ought to have visited the house during her, stay in the house of PW5. However, PW5 clearly stated that, the respondent never met the appellant during her stay in his residence. It is further noted that FIR was registered against the second respondent in connection with the complaint lodged by the respondent husband. The second respondent filed an anticipatory bail application in which the appellant filed an affidavit making allegation against her husband and based on the affidavit, he was released on bail. But in her counter in the main divorce petition, she stated that she was acquainted with the second respondent only as driver. However, before the High Court in her affidavit, she



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described him as a family friend and levelled several allegation against her husband, which appears to be abnormal and inconsistent.

20. In her counter, she alleged that the respondent and his mother harassed her by demanding dowry. However, she has not lodged any complaint against her husband, or his mother till the husband filed divorce petition. On the contrary, her husband had filed an FIR against the second respondent alleging kidnapping, and committing theft, soon after she filed a complaint alleging dowry demand against her husband and mother-in-law which was admitted by her. It further reveals that subsequent to the filing of the divorce petition, wife initiated several criminal proceedings against the husband and his family members including DVC case, maintenance case etc. However, she did not take any steps to prosecute or pursue those cases thereafter. Further, the appellant filed a petition for restitution of conjugal rights against her husband only in the year 2015, nearly five years after the husband filed divorce petition.

21. The appellant further contented that the respondent had alleged that the daughter was not born to him and sort a DNA test.



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However, the DNA report conclusively established that he is the biological father of the child and therefore the respondent failed to substantiate his allegation regarding paternity and the ground of adultery. The counsel for the respondent submitted that the allegation regarding paternity was only one of the earlier accusation and that the DNA test alone does not exonerate the appellant from the allegations. He contended that the evidence of eyewitnesses, coupled with the surrounding circumstances and the documentary materials on record clearly establish the conduct and character of the appellant. The evidence of P.W.3 and P.W.4 clearly supported the contention raised by the respondent. Their evidence cannot be eschewed mere on the ground that they are subordinate to the respondent. The above evidence is supported by the FIR lodged by the respondent as well as by evidence of P.W.2 as well as evidence of P.W.5.

22. It is pertinent to note that the appellant and respondent had earlier entering into a consent divorce deed in the year 2002, the appellant though admitting her signature on the deed claimed ignorance of the the contents of the document. In this connection, the respondent examined PW2 who referring to the said document stated that as early as,



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in the year 2001, the spouse had disputes arising out of the appellants alleged immoral conduct, and they had decided to separate and execute consent deed on which he had also signed as a witness. However, the said deed is not valid in the eye of law, it was stated that subsequent to its execution, the husband had condoned the alleged misconduct of the wife and lived happily until 2010. It is clearly established through oral and documentary evidence that in the year 2010, the parties again faced marital discord and thereafter appellant left the matrimonial home and began living separately without any reasonable cause. several complaints were filed by the husband and subsequently the wife also initiated multiple criminal proceedings against him. however, the husband has clearly proved the grounds for divorce by examining witness and producing documents.

23. After a careful analysis of the entire record, and evidence adduced by the parties, the first appellate allowed the petition thereby the marriage between the parties was dissolved. There is no ground to interfere with the order to set aside the well reasoned order of the first appellate Court and therefore, the first appellate Court has rightly allowed the petition, which did not warrant any interference.



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24. Such being the position, this Court do not find any infirmity in the findings of the Courts below. Accordingly, the substantial questions of law are answered. I do not find any merit in these Civil Miscellaneous Second Appeals and hence, the same are liable to be dismissed.

25. In the result, these Civil Miscellaneous Second Appeals are dismissed. The common judgment and decree made in HMCMA.Nos.34 and 35 of 2019 dated 17.09.2020 on the file of the Principal District Court, Theni are hereby confirmed. No costs. Consequently, connected miscellaneous petition is closed.

12.12.2025

Index : Yes / No
NCC : Yes / No

RM

To

- 1.The Principal District Court, Theni.
2. The Subordinate Court, Theni.

Copy to

- 1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court, Madurai.

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R.POORNIMA, J.

RM

Common Judgment in
C.M.S.A.(MD)Nos.3 & 7 of 2021

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