



CMA(MD) NO. 46 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 19.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)Nos.46 and 47 of 2020

and

C.M.P.(MD)No.783 of 2020

Ravishankar

... Appellant in both C.M.As

Vs.

Kavitha

... Respondent in both C.M.As

COMMON PRAYER : Civil Miscellaneous Appeal filed under Section 55 of the Indian Divorce Act, to set aside the judgment and decree dated 13.08.2019 made in I.D.O.P.Nos.42 and 47 of 2016 on the file of the learned Principal District Court, Tiruchirappalli.

For Appellant	: Mr.H.Lakshmi Shankar
	For Mr.A.Joel Paul Antony
For Respondents	: Mr.T.Lenin Kumar

COMMON JUDGMENT

Challenging the judgment and decree passed in I.D.O.P.Nos.42 and 47 of 2016 dated 13.08.2019, by the learned Principal District Judge, Tiruchirappalli, these Civil



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Miscellaneous Appeals are filed.

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2.For the sake of convenience, the parties are arrayed herein as per the ranking in I.D.O.P.No.42 of 2016. The appellant is the husband and the respondent is the wife. I.D.O.P.No.42 of 2016 is one for divorce filed by the husband. I.D.O.P.No.47 of 2016 is one for restitution of conjugal rights filed by the wife. The learned trial Court allowed the petition in I.D.O.P.No.47 of 2016 and dismissed the petition for divorce in I.D.O.P.No.42 of 2016.

3.The case of the petitioner husband is as follows:-

The marriage between the petitioner and the respondent was an arranged marriage and the same was solemnized on 09.06.2014 at St.John Church, according to the Christian customs and rights. The claim of the petitioner husband is that the respondent lived peacefully with the petitioner only for three months. However, even during that period, the respondent insisted and urged the petitioner for a separate family life in her maternal home detaching from his parents from the matrimonial home. The petitioner's parents are senior citizens. The petitioner's parents are sick and aged. The claim of the petitioner is that from the very instance of marriage, the respondent had conducted her with a kind of superiority complex,



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considering her educational qualification of M.A., M.Phil., B.Ed. Since the petitioner is only a diploma holder, the respondent had always been blaming him for not matching with her educational qualification and kept on finding fault with him. The respondent claimed that she was forced to into the marriage by her father, brother and sister. She did not like the petitioner and the respondent wife either provided him conjugal bliss nor fulfilled her duties as a dutiful wife. The petitioner had been extremely patient on all the occasions, whenever the respondent ignored him and also refused conjugal bliss. The respondent was having a habit of harassing the petitioner and quarrelling with his parents. Whenever the relatives of the petitioner had visited their matrimonial home, the respondent had quarreled with the petitioner's parents and she had gone to the extent of objecting that she will not let his relatives into their matrimonial home. She never conducted her with any respect towards her in laws and relatives of the petitioner. The respondent frequently went to her maternal home. In the meanwhile, she became pregnant.

4. In one of the instances, when she went along with her mother-in-law for medical checkup during the month of May 2015, leaving her mother-in-law in the hospital, she left unnoticed. The petitioner's mother tried to contact the respondent, however, the same was continuously engaged and she did not respond to the phone



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call of her mother-in-law. The respondent had deserted the petitioner and his family members without giving any information and without any permission from the elders of her matrimonial home or from the petitioner, she had left for her maternal home from the hospital. He also claimed that she had left to her parental home with all her valuables and belongings. After leaving to her maternal home, baby shower function was conducted in the month of June 2015 by the respondent and her family without informing to the petitioner and his family. Even after such a situation, the petitioner and his parents went to the respondent's house. However, they categorically refused to allow them to enter into the house and threatened not to enter into their house. All the efforts taken by the petitioner to convince the respondent and bring her back to his matrimonial home through friends and relatives failed. While so, on 14.08.2015, a girl child was born to the respondent. However, the same was not informed by the respondent or her family members to the petitioner. Despite the same on coming to know of the fact of his childbirth, he went to the hospital, namely, Jennette Hospital at Trichy, wherein the respondent was admitted for delivery. However, the respondent's parents, brother and sister abused them without letting him to have a view of his girl child.

5. Even after a year of childbirth, without coming back to her matrimonial



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home, the petitioner lodged a complaint on 17.09.2016, for restitution of conjugal rights. At the time of inquiry, the respondent and her family members appeared along with her parents and declared that she is not willing to live with him and she has no idea of returning back to the matrimonial home. The respondent, her father, her brother and sister went to the extent of insisting him to withdraw the complaint given by him for restitution of his conjugal rights with his wife. Feared by their threat, the petitioner preferred a complaint to the Superintendent of Police, at Trichy and the Social Welfare Officer, at Trichy, on 27.09.2016.

6.The conduct of the respondent had been extremely serious to such an extent that the petitioner has reached a point of no returns and he had suffered maximum at the hands of the respondent and her family members. All the efforts taken by the petitioner to resolve the issues, which have crept in between him and his wife could not be put to rest despite several efforts. On the other hand, he was subjected to untold cruelty, which could never be explained in words. The petitioner suffered cruelty both physically as well as mentally for more than 1½ years and the respondent had committed cruelty on him and had deserted him by leaving the matrimonial home without information, as a result of which, the petitioner was put to a condition that he is left with no other option, rather filing a petition for divorce



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on the grounds of cruelty.

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7.The case of the respondent is that on 05.12.2016, simultaneously she also filed a petition for restitution of conjugal rights before the learned District Judge Court, Trichy, refuting each and every allegation set out by the petitioner in his petition for divorce. The respondent had filed a counter and further elaborated the instances, which led to the present situation. The marriage itself was conducted on the information given by the petitioner's family that the petitioner is a qualified person, who is qualified in B.S.W., T.T.C., AC Mechanic. That apart, it was also informed at the time of marriage that the petitioner's father owns a terrace house and the same would be given to the petitioner in future. Though it was informed that the petitioner has a younger brother, named, Vijay Anand. He is employed in Abu Dhabi and hence, he will be allotted with a plot near their house and his marriage would be arranged, only after constructing a house in that house site. It was informed that the daughter of the family has already been married and she is living with her husband in her matrimonial home. At the time of marriage, an amount of Rs.75,000/- worth gold jewelry and home appliances worth Rs.2,00,000/- were given as dowry.



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8. It was also insisted upon that a two wheeler should be given to the petitioner at the time of marriage. Though it was not given at the time of marriage, the respondent's father agreed to do the same in future. On the very same day of marriage, that is, on 09.06.2014 itself, the petitioner, his father John Madhalai, mother, brother Vijay Anand, sister Meena and her husband Prabhakaran, Aunt Vasantha, Son Sambath together picked up conversation with the respondent informing that the dowry provided by the respondent's family is very less and further insisted for more dowry, including car and jewelry. Within one week of marriage, the petitioner's sister Meena along with her family had vacated the rented house where she had been residing and came back to her maternal home and declared that she will continue living in her maternal home and it was only for the purpose of the petitioner to get married, she had remained in a rented apartment and she will continue to be in her parents house. Apart from his sister's family, the petitioner's aunt Vasantha along with his son and maternal grandmother of the petitioner were also residing along with them. The respondent required the petitioner to give his educational certificates for the purpose of registering the marriage. However, the petitioner refused at the first instance and later gave his educational certificates. From which, the respondent was shocked to understand the petitioner is not even qualified SSLC. When the respondent with heavy heart

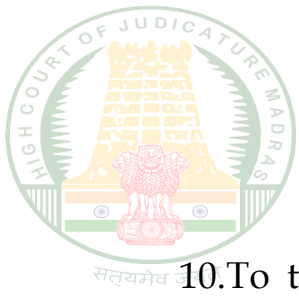


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inquired about the same to the petitioner, the petitioner had clarified that he had married her only by giving false information to her parents. When the petitioner's parents arranged marriage for their younger son Vijay Anand, even at the time of talking terms for the purpose of marrying Vijay Anand, it was promised by the petitioner's parents that the same family house would be allotted to Vijay Anand. That was the point, which the respondent was fully upset for the reason that it was the same promise, the respondent was also brought into her matrimonial home.

9.However, she was pregnant by that time. Since she was left with no other options, she continued to live in her matrimonial home, despite her inlaws continuously kept pestering her for additional dowry. They have also swindled Rs.1,50,000/-, which she had saved from her salary for the purpose of meeting the expenditure of the petitioner's brother Vijay Anand's marriage. During pregnancy, the petitioner neither took care of the respondent properly nor provided her with necessary food and other medical facilities and she was subjected to grave domestic violence to the extent that she suffered without food for at least two days in the petitioner's house. That apart, she was also subjected to torture, either by dowry demands or by negating her without conversation.

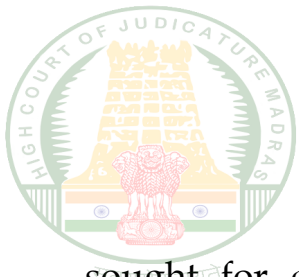


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10.To the culmination of all the petitioner's father very often in a drunken mode, continuously misbehaved with the respondent, demanding more dowry. The continuous starvation, emotional abuse and physical abuse to which the respondent suffered, had created a situation to such an extent that the respondent was left with no other option, rather to leave her matrimonial home and take solace at her maternal home for the purpose of taking care of herself at the time of pregnancy. On 14.08.2015, when the girl child was born, the petitioner visited the hospital with nearly 60 persons and created ruckus claiming that he was not allowed to see the child who was accommodated in the intensive care unit. Thereafter, the petitioner neither visited the respondent nor his girl child and had never bothered to maintain his wife and child. Left no other option, the respondent on on 17.09.2016, lodged a complaint in All Women Police Station, Lalgudi and First Information Report in Crime No.4 of 2016 was registered as against the petitioner and his family members under Sections 420, 498(A) and 506(i) of IPC and Section 4 of the Dowry Prohibition Act, 1961.

11.Claiming that all the allegations, which has been foisted by the petitioner in his Petition for divorce are imaginary narrations made by the petitioner exclusively for the purpose of seeking divorce and they are all baseless and false, the respondent



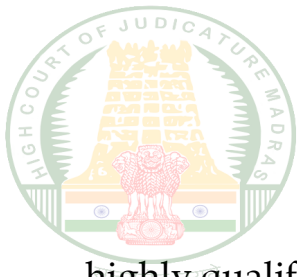
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sought for dismissal of the petition for divorce and allowing the petition for
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restitution of conjugal rights.

12.The learned trial Court examined one witness and marked 14 documents on the side of the petitioner and examined three witnesses and marked 32 documents on the side of the respondent. The learned trial Court had taken up both the petition for divorce and the petition for restitution of conjugal rights and has framed five issues and pointed out that the factum of marriage between the petitioner and the respondent has been mutually agreed, that the girl child was born to the petitioner and the respondent out of their matrimonial on 14.08.2015, the learned trial Court proceeded that the petitioner has filed the petition for divorce on the ground of cruelty.

13.Relying upon the Hon'ble Supreme Court in the case of Suman Singh v. Sanjay Singh reported in 2017 (5) L.W. 288, the learned trial Court pointed out that the term "Cruelty" has not been defined in the Indian Divorce Act or Indian Marriage Act. The grounds relied upon by the petitioner for seeking divorce as pointed out by the learned trial Court is as follows:-

(i)The respondent conducted herself with a superiority complex, since she was



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highly qualified than that of the petitioner.

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(ii)The petitioner is not suitable for her either education wise or by way of his status.

(iii)The petitioner's family, more particularly, his parents, his sister, her husband and other relatives claimed that the petitioner was qualified in B.S.W., T.T.C., AC Mechanic at the time of marriage and later only when the respondent took efforts to register their marriage, it was found that her family was deceived by the petitioner's family.

14.The learned trial Court further proceeded to observe that the petitioner was examined as P.W.1 at the time of cross examination. He agreed that his education qualification was falsely depicted in his marriage invitation, which was marked as Ex.R2. He had specifically admitted that his education qualification details was printed in his marriage invitation only with his consent. The said invitation, which was marked as Ex.R6, displays his education qualification as B.S.W., T.T.C., AC Mechanic. However, at the time of cross examination, he had admitted that he is qualified only as AC Mechanic and he is not qualified in B.S.W., T.T.C. From the evidence deposed by the petitioner, it is found that the petitioner have completed a drawing course for a period of three months. However, he had discontinued B.S.W.,



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in the halfway.

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15.From the admissions made by the petitioner in his cross examination, the learned trial Court concluded that the respondent claim that she was deceived by giving false informations about the educational qualification at the time of marriage by the petitioner and his family as true and further, it is observed that on coming to know that she was deceived, she would have expressed her dissatisfaction on that particular period of time. However, the claim of the petitioner that the respondent picked up quarrels pointing out his educational qualification personally and in front of his relatives and the parents was neither pleaded nor duly proved by appropriate evidence.

16.The other allegations which have been made by the petitioner that the respondent had declared that she did not like her husband and that she was forced to marry him only due to the compulsion of her parents and brother and she failed to extent conjugal bliss to him, were all specifically denied by the respondent in her pleadings as well as in her evidence. When a specific question was put up to the petitioner at the time of cross examination as to when an indifference crept in between their matrimonial life and conjugal relationship, he had admitted that for



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the first six months, their matrimonial life was peaceful and cordial. Only after six months from the date of marriage. On such background, the learned trial Court proceeded to observe that the allegations made by the petitioner that there had never been a conjugal bliss between them and could not be given weightage and the same is without any substance and appropriate evidence.

17.It was concluded that the factum of the birth of child on 14.08.2015, itself would suffice to prove the falsify of the allegations set out by the petitioner that marriage was not cordial. Though the petitioner had claimed that the respondent left her matrimonial home very frequently to her maternal home and she always picked up quarrel with him, his parents and his family members, expressing disgust and dissatisfaction, the same was not duly proved by the petitioner by appropriate evidence or documents. The date of desertion was claimed during the month of May 2015, when the respondent was accompanied along with the petitioner's mother for a medical checkup and that too, the respondent had disappeared uninformed from the hospital. However, the petitioner failed to prove the same by proper evidence by bringing his mother as one of the witnesses to substantiate his claim. Though the said narrative is projected as happened during the month of May 2015, the specific details are not elaborated to prove the same. Similarly, it was also claimed by the



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petitioner that during June 2015, he was not properly invited for the baby shower.

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When a baby shower function was conducted privately without information by the respondent and when he went there uninvited, he was disrespected, was also not duly proved by him with proper evidence. The learned trial Court observed that more particularly, the claim of the petitioner that he had visited his child on 15.08.2015 in the hospital along with 6 - 7 persons and that he was not allowed to see his child. The same was contradicted by cross examining him and he admitted that he actually happened to see his child.

18. On the basis of the arguments, evidence deposed and the documents marked before the learned trial Court, the learned trial Court came to a conclusion that the allegations made by the petitioner for grant of divorce on the grounds of cruelty was not properly proved by him by examining appropriate evidences other than him and by letting proper documents by marking proper documents before the learned trial Court. The contradictions, which was substantiated by the learned counsel for the respondent at the time of the cross examination of the petitioner as P.W.1, would itself suffice to disprove his case, more particularly, that the respondent had voluntarily left the matrimonial home without information with all her belongings and that he was not permitted to meet his child. On that basis, the

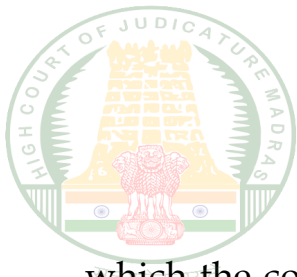


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learned trial Court had concluded that the petitioner's case is not a suitable one for grant of divorce and hence, for the sole reason that the petition for restitution of conjugal rights filed by the respondent is entitled to be allowed.

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19.The learned counsel appearing for the appellant/petitioner husband categorically submitted that the petitioner had filed a petition for divorce on the grounds of cruelty, for which the respondent had filed a counter refuting each and every contention of the petition for divorce and had also brought forth various other allegations as against the petitioner and his family. The allegations set out by the respondent in her counter and the petition for restitution of conjugal rights, her conduct of lodging a criminal complaint against the petitioner and his family after almost one year from the date of birth of a girl child on 17.09.2016 and the filing of petition under Protection of Women from Domestic Violence Act, roping in all the family members of the petitioner, including the petitioner would not prove the bonafide on the part of the respondent's willingness to restitute her conjugal rights with her husband in real terms. Had there been an iota of goodwill on the part of the respondent with the real intention to rejoin her husband, the tone and tenor of the counter affidavit would have been limited by denying the contents of the petition for divorce and further allegations would not have been made in the manner, in



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which the counter has been drafted and the way, in which the other criminal cases have been framed as against the petitioner and against his family members. The learned trial Court failed to go into this aspect and the ill treatment meted out to the petitioner by the respondent, who is working as an Anganwadi Staff in the Social Welfare Department, declaring him mismatch to her in terms of education, employment and social status personally and before his family members and before the relatives was certainly a point of aberration, which led to the crippling of the matrimonial ties between the petitioner and the respondent.

20.He also pointed out that the petitioner had lodged a complaint before the All Women Police Station, at Lalgudi on 15.11.2016, seeking restitution of his conjugal rights with his wife. However, the respondent turned up to the police station along with her family members, only to disclose her intention not to live with him anymore. Even after taking all the efforts by the petitioner and his relatives genuinely to rejoin with the respondent and his child, the same proved futile only because of the non cooperation and the attitude of the respondent and her family members. To the shock and surprise of the petitioner, the respondent went to the extent of lodging a FIR in Crime No.174 of 2016 before All Women Police Station on 18.03.2017 under Sections 294(b), 323 and 506(i) of IPC.



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21. When the matter was referred before the District Social Welfare Officer, the final report of the District Social Welfare Officer revealed that there was not even an iota of truth in her complaint of dowry harassment. When the same was challenged before this Court in CrI.O.P.(MD)No.4903 of 2017, by the respondent wife, the same was also dismissed by this Court, by order dated 24.04.2017. The respondent wife had gone to the extent of roping in all his relatives not only in the dowry harassment case, but also in the petition filed under Domestic Violence Act, which is one for compensation and maintenance and other residential issue as against the petitioner. Categorically contending that falsely impleading the relatives of the husband in criminal cases with respect to the matrimonial issues between a husband and wife would amount to mental cruelty and emotional abuse and even the same would go to the extent of physical cruelty, the learned counsel relied upon the judgment of the Hon'ble Supreme Court in the case of V.Bhagat v. D.Bhagat reported in (1994) 1 Supreme Court Cases 337 and pressed for allowing the Appeals

22. Per contra, the learned counsel appearing for the respondent wife categorically submitted that all the arguments put forth by the learned counsel for the appellant before this Court has not been pleaded in his petition for divorce. The allegation put forth in the petition for divorce is only with respect to the claim of the



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petitioner that the respondent's wife had insulted him as a mismatch to her due to his educational qualification and status. It was also pointed out by the learned counsel that though the petitioner claimed that the respondent wife had left her matrimonial home without information when she was accompanied by her mother-in-law for medical check up during May 2015, he had miserably failed to prove the appropriate date of separation and the manner in which she had left her matrimonial home. However, he pointed out that during her pregnancy, she was subjected to starvation and was pestered by her inlaws for additional dowry, as a result of which, not able to withstand the heinous domestic violence which she had to face in her shared matrimonial home, she was left with no other option, rather leaving her matrimonial home to safeguard her health during pregnancy.

23. Having given birth to a girl child, the respondent had dissatisfaction about the fact that she and her family was deceived by the petitioner and his family, his education at the time of marriage. Now, for the welfare of the family and for the sake of her girl children, she cannot even imagine for a divorce and restitution of marital conjugal rights. It is the only way out left to her for a secured life. The petitioner had never been diligent in his duties as a dutiful husband or a dutiful father and he had never bothered to maintain the cordial relationship with her



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daughter despite an order of maintenance being passed by the learned Special
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Magistrate in the domestic violence case and arrears of Rs.8,90,000/- of maintenance was pending before the said Court and only after the order passed by the Hon'ble Apex Court, in which he challenged the aforesaid order, he had settled only a part of the said arrears to the tune of Rs.4,72,000/- and yet an arrears of Rs.4,18,000/- is pending as on 15.08.2024. This itself would suffice to prove the malafide of the petitioner who has filed this petition for divorce on baseless grounds. In the presence of a girl child, the question of heeding to the petitioner's petition for divorce will never arise and the welfare of the girl child is of primordial concern and these Appeals should be dismissed and pressed for dismissal of the Appeals.

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

25.From the facts and circumstances of the case, the point of indifference between the petitioner and his wife though with respect to his educational qualification, which was alleged to have been suppressed at the time of marriage had prevailed, the real fact is as to the demand of the respondent wife with respect to the house property where the joint family had been dwelling. It is only when



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steps were taken in the joint family for arranging the marriage of the younger brother of the petitioner, namely, Vijay Anand, the respondent has started quarrelling with the petitioner and his family as the same promise which was given by the petitioner's family with respect to the joint family house was made by them to their younger son's proposed matrimonial connection. It was only then the problem in real terms had emanated.

26. However, this Court is of the considered view that it cannot be negated that in a joint family setup with parents, daughter's, family and extended aunty's family and a grandmother along with an younger brother, a life of new bride would not have been easier to lead a blissful life. The day-to-day affairs of not being able to adjust with the day-to-day affairs of a joint family, could be understood.

27. The plight of the respondent is that, she had suffered in the joint family, even to such an extent that she was not properly fed during the time of her pregnancy and the same cannot not be negated. However, as rightly pointed out by the learned trial Court, that the petitioner's pleadings were not supported and duly proved by appropriate witnesses and evidence before the learned trial Court. More, particularly, in view of the discrepancy found in para no.11, of his pleading that she



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had left her matrimonial home without information from the hospital, while accompanying along with her mother-in-law in the hospital for medical checkup uninformed along with all her valuables was properly contradicted by the learned counsel for the respondent at the time of cross examination.

28.It was also brought to the notice of this Court that all the articles and home appliances belonging to the petitioner was handed over only before the learned Judicial Magistrate Court where the domestic violence case was pending and it was not that she had not taken away at the time of slipping from the hospital.

29.As far as the jewelry is concerned, the learned counsel for the petitioner claimed that she had taken all the jewelry along with her and the said factum has been proved by marking the photos of the respondent, participating in a marriage function wearing the same. But the said submission is strongly denied by the learned counsel for the respondent that the jewelry were not handed over to her and appropriate steps has been taken by her before the learned Judicial Magistrate in the domestic violence case. Though the petitioner has pleaded in his petition for divorce, in para no.15, he made a complaint before the All Women Police Station, Lalgudi, on 17.09.2016, seeking restitution of conjugal rights. He has also pleaded



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that he preferred a complaint to the Superintendent of Police on 27.09.2016 as against the respondent and her family for certain ruckus which was alleged to have created by the respondent's father, brother and sisters while they appeared before the All Women Police Station for inquiry. Had the intention of the petitioner was to reconstitute his conjugal rights with his wife in terms of his complaint lodged on 17.09.2016, he would not have preferred a complaint before the Superintendent of Police and would have conducted her with patience to work out the possibilities of reunion back with his wife and child.

30. However, I am of the considered view that the said complaint was lodged only with the sole intention of creating a situation that the wife did not turn back, despite his request for restitution and he himself revoked the situation for a reunion by lodging a complaint before the Superintendent of Police against her family members within 10 days from the date of lodging a complaint before the All Women Police Station, Lalgudi. That apart, none of the allegations made by the petitioner in his pleadings are duly proved by appropriate evidence before the learned trial Court and accordingly, I do not find any merits in these Appeals and the Civil Miscellaneous Appeals fail.



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31. While dictating the judgment, the learned counsel for the appellant seeks that the matter may be referred to mediation as a last resort.

32. In view of the above, post this case on 07.04.2025 along with mediation report.

Sd/-

19.03.2025

// True Copy //

/ /2025

Sub Assistant Registrar
(CS - I/ II / III /IV)

Mrn

To

1. The Principal District Judge, Tiruchirappalli.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc M/s T.Lenin kumar Advocate S.R.No.27587 dated 25/04/2025

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