



C.M.A.(MD)No.555 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2025

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

and

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.555 of 2021

Arumugam

... Appellant / Petitioner

Vs.

Sankaran

... Respondent / Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, 1984, to set aside the judgment and decree dated 14.05.2019 made in H.M.O.P.No.175 of 2018 on the file of the learned Family Court, Tirunelveli.

For Appellant : Mr.V.M.Jegadeesha Pandian

Respondent : No appearance

JUDGMENT

(Judgment of the Court was made by **L.VICTORIA GOWRI, J.**)

This Civil Miscellaneous Appeal is directed against the judgment and decree passed in H.M.O.P. No.175 of 2018 on the file of the learned Family Court, Tirunelveli, whereby the petition filed by the appellant-



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wife seeking dissolution of marriage with the respondent-husband came to be dismissed.

2. For the sake of convenience, the parties are referred to as “wife” and “husband”.

Prologue:

3. Marriage, in our constitutional and social framework, is not merely a private contract between two individuals but a foundational institution of the family, resting on mutual trust, companionship and fidelity. Family Courts, when invited either to dissolve or to preserve such a relationship, are required to balance emotional assertions with legal standards, and subjective grievances with objective proof.

4. Mental cruelty is often subtle, and many such acts occur within the privacy of the matrimonial home. At the same time, a decree of divorce cannot be granted on mere allegations or suspicion. It must rest on a clear preponderance of probabilities arising from evidence on record. Equally, a petition cannot be dismissed merely on moral



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disapproval if the legal ingredients of cruelty stand established. It is in this backdrop that the present appeal has to be considered.

Case of the wife (petitioner / appellant):

5. The case of the wife, as pleaded in the petition in H.M.O.P. No. 175 of 2018 and reiterated in her deposition, is as follows:

The marriage between the wife and the the husband was solemnised on 11.04.2008 at Gopalamuthiram, in the temple of Lord Palani Andavar, according to Hindu customs and rites. After the marriage, both of them resided in the house of the wife's grandmother, Subbammal, at Gopalamuthiram and continued to live there till the end of 2009. The husband was employed in a hotel. According to the wife, he used to spend all his earnings on liquor and was of a highly suspicious nature. After consuming alcohol, he would beat, kick and harass her.

6. In 2010, when the husband was employed in a hotel at Tiruchendur, he took a rented house there and the parties lived together in the said house. During this period, the wife became pregnant. For the purpose of confinement, she was taken back to



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Gopalamuthiram and on 09.07.2011, she gave birth to a male child.

Thereafter, as the wife did not desire to live in Tiruchendur, they shifted and took a rented house at Palayamkottai, where they resided. A female child was born on 22.04.2014.

7. According to the wife, even after the birth of two children, the husband did not change his behaviour. He continued his suspicious and abusive conduct. It is her case that the husband, under the influence of alcohol, used to sexually harass her in such a manner that even their elder male child, aged about 8 years, could witness the same and ask questions about what was happening. The wife further averred that on 24.07.2018, she lodged a complaint against the husband at the All Women Police Station, Palayamkottai, which is pending enquiry. Enraged by the filing of the said complaint, the husband brutally assaulted her and left the matrimonial home, stating that he would no longer live with her. It is her assertion that the parties have been living separately since then and there is no possibility of reunion. On these averments, she prayed for a decree of divorce on the ground of cruelty.



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Case of the husband (respondent):

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8. The husband filed a detailed counter affidavit before the learned Trial Court denying the allegations and putting forth his version. According to him, all the allegations in the petition are false. The husband belongs to the Poopandaram community and the wife to the Gopi Vannan community. They fell in love and, under the guise of an arranged marriage arranged by elders, the marriage was solemnised. The husband is visually impaired and is a person with disability. He claims that he bore all marriage expenses on his own. After the marriage, they initially lived at Karungulam. He asserts that he has no habit of drinking liquor and that he has not at any point subjected the wife to any physical or sexual harassment.

9. On the other hand, he alleges that the wife was cruel towards him. She is said to have attacked him with a ladle, sprinkled chilli powder mixed with hot water on him, and thrown utensils at him, causing injuries for which he had to take treatment. Due to the wife's conduct, he was constrained, according to him, to live at a house arranged at her instance. He admits the birth of the two children, the male and female child, and does not dispute their paternity. The husband states that the wife used to speak indecently, frequently



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quarrel with him, file false police complaints without valid reason, mock his physical disability and refuse to participate in marital relations. He asserts that he thereby suffered immense mental cruelty.

10. He categorically states that he never harassed the wife in any manner, either physically or sexually. The husband further alleges that due to the interference of one Prakash Raj, aged about 23 years, a final year law student from Kaliyapur village, Thoothukudi District, misunderstandings started between them. It is his case that Prakash Raj's father works at the Palayamkottai fish market and that an illicit relationship developed between the wife and Prakash Raj. When he questioned the wife, she initially said that Prakash Raj was like her brother. The husband explains that, while he was employed as a cook in hotels at Marthandam and subsequently in Chennai, he used to stay at the place of work from Monday to Saturday, returning only during weekends.

11. According to him, at the instance of the wife and Prakash Raj, he was directed to deposit money meant for the maintenance of the wife and children into the bank account of Prakash Raj, and he did so.



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Later, upon learning of the alleged illicit relationship, he returned to Palayamkottai. The husband alleges that on one occasion, when he unexpectedly came home, the wife and Prakash Raj were found together in a compromising position in the matrimonial home, which incident was also allegedly witnessed by the wife's mother. He asserts that the wife's mother and other persons, including the relatives and associates of Prakash Raj, supported this relationship.

12. The husband states that he lodged a complaint against the wife and Prakash Raj at the All Women Police Station, Palayamkottai, in which Prakash Raj appeared for enquiry, and both he and the wife were warned and let off. It is his categorical case that the present petition for divorce has been filed by the wife only at the instigation of Prakash Raj and that she has no concern for the welfare of the children. He, therefore, prayed for dismissal of the divorce petition and requested that suitable orders be passed regarding custody of the children.

Gist of the learned Trial Court's judgment:

13. Before the learned Family Court, the wife, Arumugam, examined herself as P.W.1 and marked Exhibits P1 to P6. On the side of



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the husband, he examined himself as R.W.1 and the wife's mother, Maadathi, as R.W.2. Exhibits R1 to R4 were marked on his side.

14. The Family Court framed two issues, namely:

(i) Whether the petitioner (wife) is entitled to a decree of divorce and

(ii) To what other reliefs, if any, is she entitled?

15. On Issue No.(i), the learned Family Court recorded the following, *inter alia*:

According to the pleadings of the wife, after the birth of the first child, the parties shifted to a rented house at Senthil Nagar, Palayamkottai, and a female child was born on 22.04.2014. The wife alleged that the husband came home drunk every day, beat her and physically tortured her, and that under intoxication he sexually harassed her in a manner seen even by their 8-year-old son. For this alleged cruelty, she lodged a complaint on 24.07.2018 (Ex.P6) at the All Women Police Station, Palayamkottai, and soon thereafter, the husband allegedly assaulted her and left the house, declaring that he would no



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longer live with her.

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16. The learned Family Court, however, noticed that except Ex.P6, which was lodged only ten days prior to filing of the divorce petition on 02.08.2018, there was no prior complaint or contemporaneous record of physical or sexual harassment throughout the ten years of marriage. The learned Family Court also took note that though the wife claimed that the 8-year-old son had witnessed the alleged sexual harassment and that she was willing to examine him, she did not, in fact, examine the child as a witness. No medical records were filed showing treatment for any injury or assault. Thus, other than her oral deposition, there was no independent evidence to substantiate the allegations of cruelty.

17. As regards the conduct of the wife, the learned Family Court found that the wife admitted in her cross-examination that the husband used to deposit money into the bank account of one Prakash Raj and that she used to manage household expenses from the sum of Rs. 5,000/- (Rupees Five Thousand only) so deposited. The wife did not satisfactorily explain why the money was deposited in the account of Prakash Raj, who had no clear connection with her family. During



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cross-examination of R.W.1, it emerged that Prakash Raj was residing in the same compound as the wife's family, thereby lending support to the husband's allegation that a third party was interfering with the marital relationship.

18. Significantly, the wife's mother, Maadathi, examined as R.W. 2, deposed that the wife had maintained an illicit relationship with Prakash Raj, had ill-treated the husband, refused to allow him into the house and had filed false complaints at the instigation of Prakash Raj and his family members. She also stated that on one occasion, when the husband suddenly returned from Chennai, he saw the wife and Prakash Raj together in bed. R.W.2 further clarified that earlier quarrels between the husband and a shop owner, where the wife worked, were not on account of any illicit connection between the wife and the shop owner, and that it was only a verbal altercation. She did not support the allegation that the husband was habitually suspicious of the wife's character.

19. The learned Family Court therefore concluded that the wife's allegation that the husband subjected her to cruelty by baseless



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suspicion was not established. On the contrary, the evidence of R.W.2 supported the husband's version as regards the illicit relationship. The learned Family Court examined the CD produced as Ex.R4, claimed to be an audio recording of the wife allegedly threatening the husband. As no scientific or corroborative evidence was produced to establish that the voice was that of the wife, Ex.R4 was held to be of no probative value. The husband's grandmother's complaint, Ex.R3, dated 13.10.2018, addressed to the Commissioner of Police, Tirunelveli City, alleging an illicit relationship between the wife and Prakash Raj, was also taken note of as a surrounding circumstance.

20. The learned Family Court finally held that the wife failed to substantiate her allegations that the husband had physically or sexually assaulted her or that he had treated her with cruelty. Her own mother did not support her on material aspects, but supported the husband. No satisfactory explanation was forthcoming regarding the deposits into the account of Prakash Raj. The solitary complaint Ex.P6, lodged about ten days before the filing of the petition, did not establish a continuing course of cruelty. On these findings, Issue No.(i) was answered against the wife, holding that she was not entitled to a decree of divorce. On Issue No.(ii), it was held that neither party was entitled to



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any other relief. The petition was accordingly dismissed, without costs.

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Grounds of appeal:

21. Aggrieved by the dismissal of the petition for divorce, the wife filed the present Civil Miscellaneous Appeal, raising, *inter alia*, the following grounds:

The judgment and decree of the learned Family Court are contrary to law, pleadings and evidence and liable to be interfered with. The learned Family Court failed to consider the oral and documentary evidence adduced by the appellant in proper perspective and the judgment suffers from error apparent on the face of the record, resulting in gross injustice. The learned Family Court failed to appreciate the oral evidence of the appellant, who had deposed in detail about the various acts of mental and physical cruelty perpetrated by the husband and her testimony was not seriously challenged or discredited in cross-examination. In matrimonial matters, the sworn testimony of a spouse has great evidentiary value and, in the absence of strong contrary evidence, ought to be accepted. The finding that there is no sufficient proof of cruelty is therefore unsustainable. The learned Family Court erred in holding that the failure of the wife to examine her minor



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son, who allegedly witnessed the physical cruelty, must be held against her. It is contended that the child being of tender age, the non-examination of such a minor cannot be treated as fatal to the case. The suspicious mindset of the husband, according to the appellant, is clear from the defences raised by him. Despite making serious and detailed allegations of misconduct and illicit relationship, the husband did not initiate any legal action or file any counter-claim. The absence of any such steps ought to have been considered as weakening his defence. The learned Family Court, it is contended, ought to have taken the evidence of the husband “with a pinch of salt”.

Submissions:

22. The learned counsel for the appellant reiterated the grounds of appeal and submitted that the learned Family Court adopted a hyper-technical approach in weighing the evidence. It was contended that, in matrimonial disputes, direct corroborative evidence or medical records may not always be available as most incidents occur within the four walls of the matrimonial home. The testimony of the wife, given on oath, as to physical and sexual cruelty, ought to have been accorded due weight. The learned counsel further argued that the husband’s allegations of illicit intimacy with Prakash Raj were unsubstantiated,



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and that such baseless imputations on the character of the wife themselves constitute mental cruelty. It was urged that the learned Family Court erred in drawing an adverse inference from the non-examination of the minor son and that the wife was justified in not subjecting a child of tender age to the rigours of cross-examination in a matrimonial dispute involving intimate facts. On these submissions, it was prayed that the judgment and decree of the learned Family Court be set aside and a decree of divorce be granted in favour of the appellant.

23. Heard the learned counsel for the petitioner and carefully perused the materials available on record.

Point for determination:

24. In the light of the rival submissions and the findings of the learned Family Court, the following point arises for determination in this appeal:

Whether the appellant-wife has established, on a preponderance of probabilities, that the respondent-husband treated her with such physical, mental or sexual cruelty as would entitle her to a decree of



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divorce, and if so, whether the judgment and decree of the learned Family Court warrant interference?

Analysis:

25. This Court, being the Appellate Court on facts in a matrimonial appeal, has independently re-appreciated the entire oral and documentary evidence on record.

26. The wife has alleged repeated physical assaults and sexual harassment by the husband, including acts said to be witnessed by their minor son. It is not in dispute that the marriage took place in 2008 and the complaint Ex.P6 was lodged only on 24.07.2018, ten years thereafter and just ten days prior to filing the petition on 02.08.2018. Apart from Ex.P6, which is a xerox copy of the complaint, there is no prior complaint either to the police or any statutory authority, nor any independent record of medical treatment for injuries or trauma allegedly suffered by the wife at the hands of the husband.

27. The wife has asserted that her 8-year-old son witnessed the



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alleged sexual harassment and even questioned her about it. Yet, she did not examine the child as a witness, despite stating that she had no objection to such examination. While this Court agrees that a child of tender age ought not casually to be exposed to adversarial proceedings, once the wife herself relies upon the child's presence as a crucial circumstance of cruelty and asserts willingness to examine him, her failure to do so weakens the probative value of that assertion. Thus, other than her own oral testimony, there is no contemporaneous or independent material to corroborate the alleged physical and sexual cruelty.

28. On the aspect of the alleged illicit intimacy with Prakash Raj, the wife, in her cross-examination, admitted that the husband used to deposit his earnings into the bank account of Prakash Raj and that she used the sum of Rs.5,000/- (Rupees Five Thousand only) transferred every month for family expenses. She did not offer a satisfactory explanation as to why the husband's earnings had to be routed through the account of Prakash Raj, who admittedly resides in the same compound. The husband's version that the wife developed an illicit relationship with Prakash Raj and that they were found together in bed in the matrimonial home gains support from the testimony of R.W.2, the



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wife's own mother.

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29. R.W.2 has categorically deposed that the wife had an illicit relationship with Prakash Raj, acting under his instigation, the wife ill-treated the husband, denied him entry into the house and lodged false complaints, and on one occasion, the husband returned unexpectedly from Chennai and found the wife and Prakash Raj together in bed. It is pertinent that no suggestion of animosity or motive for false implication was put to R.W.2 in cross-examination. On the contrary, her evidence was consistent and natural. The learned Family Court, therefore, rightly placed reliance on her testimony.

30. The earlier allegation made by the wife during cross-examination that the husband had an illicit relationship with her elder sister finds no mention in the pleadings. She has also spoken of consuming poison out of humiliation, but this again is not pleaded nor supported by any medical record. Courts cannot base findings on serious allegations that are neither pleaded nor substantiated. It is thus clear that while the wife attempted to project the husband as a person of suspicious disposition, the evidence on record indicates that his



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suspicion was not wholly unfounded but was rooted in circumstances which the wife has failed to satisfactorily explain.

31. Ex.P6, the complaint given to the All Women Police Station, Palayamkottai, dated 24.07.2018, refers to sexual cruelty. It is the only complaint lodged by the wife since the marriage of 2008. No material has been placed to show any follow-up action or enquiry culminating in a finding of cruelty. The timing of Ex.P6, filed just a few days before the institution of the divorce petition justifies the learned Family Court's conclusion that it does not reflect a continuous pattern of cruelty, but appears to be a document created in close proximity to the litigation.

32. Ex.R3, the complaint of the husband's grandmother, Manonmani, to the Commissioner of Police, Tirunelveli City, dated 13.10.2018, narrating the wife's relationship with Prakash Raj, though not determinative by itself, is a relevant surrounding circumstance confirming the stand of the husband. Ex.R4, the CD said to contain audio recordings of the wife speaking in a threatening manner, was not corroborated through voice identification or expert evidence, and was therefore rightly treated with caution by the learned Family Court.



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33. It is well settled that matrimonial offences such as “cruelty” are to be proved on a preponderance of probabilities. At the same time, the Court cannot dissolve a marriage on mere assertions when the surrounding circumstances and independent evidence do not support those assertions.

34. In the present case, the learned Family Court has undertaken a detailed analysis of the evidence, drawn reasonable inferences and recorded findings that the wife has not proved the alleged physical or sexual cruelty by the husband. Her own mother has testified against her on crucial aspects, and the circumstances surrounding the relationship with Prakash Raj lend credence to the husband’s allegations rather than the wife’s.

35. In view of the above, this Court finds no perversity or misreading of evidence in the approach of the learned Family Court. The appellant has not demonstrated that any material evidence was ignored or that any irrelevant consideration weighed with the Court below. The mere fact that corroborative evidence is difficult to obtain in matrimonial cases does not mean that the Court must, in every case,



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accept the uncorroborated testimony of one spouse, particularly when that testimony is contradicted by other reliable evidence, including that of a close relative like the mother.

36. In the totality of circumstances, this Court is unable to hold that the wife has discharged the burden of proving cruelty as contemplated under law. Consequently, the judgment and decree of the learned Family Court do not call for interference.

37. In view of the above discussion and findings, the point for determination is answered against the appellant. This Court is in complete agreement with the conclusion reached by the learned Family Court that the appellant-wife has failed to establish that she was subjected to such cruelty by the respondent-husband as would entitle her to a decree of divorce.

38. Accordingly, the Civil Miscellaneous Appeal in C.M.A.(MD) No. 555 of 2021 is dismissed. There shall be no order as to costs.



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Epilogue:

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39. Matrimonial jurisdiction demands a careful balance between empathy and evidence. Allegations, particularly of physical and sexual cruelty or of illicit intimacy, carry grave implications for the dignity of both spouses. Courts must, therefore, ensure that a decree of divorce is not granted on conjecture nor denied on mere sentiment, but is founded on a fair appraisal of credible material.

40. In the present case, while the marriage has undoubtedly been strained by mutual distrust and external interference, the evidence on record does not justify granting a decree of divorce on the ground of cruelty as pleaded by the wife. The law requires more than suspicion and assertion; it requires proof. In the absence of such proof, this Court, though conscious of the emotional and social difficulties the parties may face, is constrained to affirm the dismissal of the petition.

41. Consequently, the Civil Miscellaneous Appeal stands dismissed as indicated above.

[P.V,J.]

[L.V.G,J.]

29.10.2025

NCC : Yes / No
Index : Yes / No
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To

The Family Court,
Tirunelveli.

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The Section Officer,
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Madurai Bench of Madras High Court,
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P.VELMURUGAN, J.,

AND

L.VICTORIA GOWRI, J.,

Sml

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