



C.M.S.A(MD)No.12 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	15/09/2025
Date of Pronounced	17/11/2025

CORAM:

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.S.A.(MD)No.12 of 2020

and

C.M.P.(MD)No.3386 of 2020

Anitha : Appellant/Appellant/ Respondent

Vs.

Gurusamy : Respondent/Respondent/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 and decree made in HMCMA.No.2 of 2018 dated 20.02.2020 on the file of the Principal District Court, Ramanathapuram reversing the judgment and decree order dated 27.01.2017 made in HMOP.No.121 of 2014 on the file of the Subordinate Court, Ramanathapuram and allow this Civil Miscellaneous Second Appeal.

For Appellant : Mr.T.R.Jeyapalam

For Respondent : No appearance



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JUDGMENT

The Appellant/Respondent/Petitioner/wife has filed this Civil Miscellaneous Second Appeal against the judgment and decree dated 20.02.2020 passed in HMCMA. No.2 of 2018 on the file of the Principal District Court, Ramanathapuram reversing the judgment and decree dated 27.01.2017 made in HMOP. No.121 of 2014 on the file of the Subordinate Court, Ramanathapuram.

2. Brief case of the petition before the lower Court is as follows:

(a) The marriage between the appellant and the respondent was solemnized at Ramanathapuram on 17.02.2010. She is M.Sc., M.Phil., graduate and was working as a lecturer in a private college at the time of marriage. She was presented with 50 sovereigns of gold jewels and the respondent was presented with 5 sovereigns of gold jewels and a pulsar bike worth about Rs 85,000/- (Rupees Eighty Five Thousand only). Instead of seervarisai articles, appellant parents gave Rs.3,00,000/- (Rupees Three Lakhs Only) cash to the respondent. On 17.05.2010, the



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appellant became pregnant. However, due to her poor health condition the pregnancy was terminated on 18.08.2010. According to the appellant the respondent's conduct caused several mental and physical suffering. The appellant apprehended that the respondent had an illicit relationship a Muslim married woman whose husband is employed abroad. Subsequently, the appellant became pregnant again. However the respondent didn't take care of the appellant and sent her to the maternal home on 16.06.2011. He did not visit the appellant or the his child who was born on 16.09.2011. According to the appellant, they approached the panchayat, as well as well as relatives and friends seeking reunion. However the respondent had no intention to live with the appellant. On 01.09.2012, the appellant lodged a complaint against the respondent before the All Women Police Station, Ramanathapuram the police conducted an inquiry and the respondent agreed to live with the appellant his child. Consequently, the police advised the parties to seek appropriate remedy before the Court.

(b) Despite several efforts taken by the appellant, the respondent was not willing to reunite with her and demanded a sum of



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Rs.5,00,000/- (Rupees Five Lakhs Only) for the dissolution of the marriage. Consequently, the appellant filed a divorce petition on the grounds of adultery, cruelty and desertion.

3. The respondent denied all the allegations contained in the divorce petition contending that he had never deserted the appellant. He stated that he had always supported her, including during her studies and throughout her pregnancy. According to him, the first pregnancy ended in abortion due to appellant's poor health condition. He further asserted that it was the appellant's family who insisted that he should stay at their residence. He denied ever assaulting or shouting at the appellant. He further submitted that the appellant who voluntarily gave her 9 sovereigns of gold jewels which was pledged for purchasing a new Xerox machine. He always ready to live with his wife and his child and prayed for dismissal of the present Civil Miscellaneous Appeal.

4. On the side of the petitioner, P.W.1 was examined and Ex.P1 and Ex.P6 were marked. On the side of the respondent, R.W.1 was examined and no document was marked.



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5. The trial Court, after considering the evidence and records, allowed the petition. Aggrieved by the said order, the Civil Miscellaneous Appeal in HMCMA No.2 of 2018 has been filed by the respondent/husband challenging the dissolution of marriage. The first appellate Court, reversed the finding of the trial Court judgment, allowed the appeal by setting aside the decree of divorce. Aggrieved by the same, the wife has preferred the present Civil Miscellaneous Second Appeal with the following among other grounds :

(a) The first appellate Court failed to address the specific allegation made by the appellant/petitioner that the respondent had taken eight sovereigns of gold jewels within few days of the marriage and never returned them. The Court also did not consider the appellants categorical pleadings regarding the fact that within few days of the marriage, several strangers visited to the house and demanded money from the respondent and his father in a disrespectful tone .

(b) That the first appellate Court failed to take note of the fact that omitted 9½ sovereigns of gold jewels of the appellant had been taken by the respondent on the pretext of opening a Xerox shop after the pregnancy was aborted. Neither opened the Xerox shop nor engaged in any other business to augment his income; but, instead, squandered the entire money extravagantly.

(c) That the first appellate Court did not even consider the specific



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plea of the appellant/petitioner that the respondent never treated her with love and affection and fail to maintain a cordial, marital relationship with her.

(d) That the first appellate Court had erred in concluding that the appellant/petitioner had condoned the instances of cruelty committed by the respondent on her under Section 23 (1) (b) of the Hindu Marriage Act, 1955. This observation of the first appellate court is mutually contradictory to its observations that the allegations of cruelty levelled by the appellant/petitioner against the respondent are exaggerated and have not been proved. If the first appellate Court concludes that the instances and allegations of cruelty had been proved, then only the Court can formulate a question whether those instances had been condoned by the appellant/petitioner. The respondent has never pleaded either in his statement of objections or deposed in his evidence about any such condonation.

(e) That the first appellate Court has failed to note that condonation is not for all times. The concept of "condonation" of matrimonial offence has to be taken together with the concept of "revival" of matrimonial offence, i.e., conduct of leaving the matrimonial home without consent and against the wishes of the husband. Each act of leaving without consent and against the wishes of the husband will revive the past matrimonial offence, and wipe out condonation, if any.

(f) That the first appellate Court has failed to note that the law is well settled that cohabitation at times and/or living together in an attempt to repair the fissures in the relationship of husband and wife by



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themselves may not amount to condonation. To constitute condonation, the offending n spouse must accept the offending partner with a spirit of forgiveness and by wiping off the unpleasant memories, start the conjugal life as if on a clean slate.

(g) That the fair order and decretal order of the 1st Appellate Court are liable to be set aside and hence, the learned counsel for the appellant prayed to allow the Civil Miscellaneous Second Appeal.

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

(a) When there are no instances of condonation either pleaded or available in the case in hand, whether the first appellate Court is right in dismissing the divorce petition under Section 23(1)(b) of the Hindu Marriage Act, 1955?

(b) Whether the observation and finding of the first appellate Court that the appellant / petitioner alone got separated from the respondent without any sufficient cause and hence, decree of divorce cannot be granted under Section 13(1)(i - b) of the Hindu Marriage Act, 1955, is correct?

(c) Whether the instances of cruelty inflicted



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by the respondent on the appellant / petitioner are sufficient to grant a decree of divorce under Section 13(1)(i - a) of the Hindu Marriage Act, 1955?

(d)Whether the first appellate Court adopted double yardstick while considering the oral evidence of the appellant / petitioner and the oral evidence of the respondent?

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

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

9. The petitioner/wife filed the divorce petition under Section 13(1)(i), 13(1)(i-a) and 13(1)(i-b) of the Hindu Marriage Act, 1955 seeking divorce on the ground of adultery, cruelty and desertion.

10. When the petitioner specifically alleges that the



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respondent treated her with cruelty and was living an adulterous life and on that basis, seeks divorce. The burden lies, on the petitioner to establish those allegations.

11. According to the petitioner, the respondent was maintaining an illicit relationship, with another woman. However during her cross-examination, she stated that she did not know the name and address of the said women, she had not impleaded her as a party to the proceedings.

12. It is to be noted that when a party, pleads an allegation of adultery, it is essential, either to implead the alleged adulterer as a party to the proceedings or at least furnish specific particulars such as of the name and address and examine the witnesses to substantiate the allegation. In the present case, the appellant failed to provide such particulars and therefore, the allegation of adultery remains unestablished.

13. The petitioner stated that the respondent treated her with



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cruelty on various grounds, including not accompanying her with any place, body shaming, compelling her to resign from job, using harsh language, neglected her, failing to show love and affection.

14. However during cross examination she admitted that after the marriage, both the parties were residing together at Tenkasi and happily leading their matrimonial life and that she became pregnant. The pregnancy however ended in abortion. According to the respondent, the abortion occurred because of the petitioner went to her parental home, and did not take proper care of herself. On the other hand, the petitioner contended that the pregnancy was lost due to malnutrition. However, she has not produced any document to substantiate her claim that the abortion occurred due to malnutrition.

15. Though the petitioner contended that she had lodged a complaint against the respondent, but during her cross examination, she admitted that the complaint was made only with intention of reuniting with her husband and he too had consented for such reunion. There has not been proved that the complaint was not alleging cruelty on the part of



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the respondent. If the allegation of continuous cruelty were true, the petitioner would not have filed a complaint seeking reunion. She would have filed a complaint specifically alleging that of cruelty committed against her.

16. The appellant alleged that the respondent had took her jewels and pledged them to repay his debts and also to start a business but thereafter refused to return the same and caused mental harassment. The respondent who was examined as R.W.1 did not deny the same but stated that he earned only a meagre salary and in order to improve his livelihood, he decided to start a new business for which he received the jewels from his wife. The appellant and his father were examined as P.W. 1 and P.W.2, during cross examination admitted that they had no objection in handing over the jewels when the respondent requested it. Pledging the wife's Jewels for improving the families standard of living, especially with her consent does not amount to cruelty.

17. It was further admitted by the petitioner's side that



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problem between the parties arose, only 2½ years prior to the divorce petition, after the birth of second child, when the husband wanted to take back the child and the wife requested him to redeem the jewels. Therefore, it is not established by the evidence that the problems between the parties existed from the inception of the marriage and continued until the petitioner left the matrimonial home. Further the appellant has not stated when the alleged acts of reality occurred, nor she provided any specific date or events to substantiate her claim.

18. However during cross-examination, the father of the appellant admitted that there was an agreement between both families that since the appellant was working at Ramnathapuram, she would continue her employment after the marriage, and the husband/ respondent would visit her at Ramanathapuram, where the petitioner's parental home is situated. It was further agreed that the appellant would visit the respondent's house only during holidays. It is also admitted that the appellant being only daughter of her parents, preferred to reside with them, where as the respondent wanted her to come and live with him. Therefore, dispute arose between the parties.



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19. As per the admission made by the appellant, it stands clearly established that after the marriage, both the husband and wife initially living together at Tenkasi in a separate house and she had left employment in order to stay with her husband. Subsequently, she shifted to Ramanathapuram and continued to reside with her parents, refusing to come and live with the respondent. It is not established that she was continuously reside with her husband or that she left the matrimonial home due to any alleged harassment, nor is there any evidence to show that the husband drew her to her parental home. As per the admission made by the father of the appellant, several Panchayat for union was convened at the instance of the respondent alone and it is not proved that the appellant side alone take steps.

20. Though the appellant alleges that the husband continuously harassed her, maintained an illicit relationship with another woman, took her jewellery and pledged it and during her first pregnancy failed to provide proper care thereby complaining her to return to her



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parental home, which ultimately resulted in the termination of her pregnancy. However, she has not taken any drastic action against her husband, but resumed cohabitation, and subsequently became pregnant for the second time. Even assuming for the sake of argument, the allegations stated in the petitions are true even, her conduct is inconsistent with the claims now made for which she is not entitled to a decree of divorce in view of section 23(1)(b) of Hindu Marriage Act as her conduct disentitles her from seeking such relief.

21. The first appellate Court taking into consideration of the above facts has rightly dismissed the petition, and its finding do not warrant any interference.

22. 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. This Court do not find any merit in the Civil Miscellaneous Second Appeal and hence, the same is liable to be dismissed.



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23. In the result, the Civil Miscellaneous Second Appeal is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

17.11.2025

Index : Yes / No
NCC : Yes / No

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

Copy to

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



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R.POORNIMA, J.

RM

Judgment in
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