



C.M.A(MD)No.429 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.01.2025

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

CMA(MD)No.429 of 2023

P.Sakthivel

... Appellant/ Petitioner

Vs.

S.Dhanalakshmi

...Respondent / Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19(1) of the Family Court Act, 1984, to set aside the fair and decreetal order dated 31.10.2022 made in HMOP No.24 of 2022 on the file of the Family Court, Karur and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.K.Chengiz Khan

For Respondent : Mr.M.Jothiramalingam



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JUDGMENT

WEB COPY (Judgment of this Court was delivered by **R.POORNIMA, J.**)

The appellant/petitioner/husband has filed this Civil Miscellaneous Appeal against the fair order and decretal order dated 31.10.2022 passed in HMOP No.24 of 2022 by the Family Court, Karur

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

(a) The petitioner submits that the respondent is the legally wedded wife of the petitioner. The marriage between the petitioner and the respondent was solemnized on 08.07.2001 in Konar Thirumana Mandabam, Thanthonimalai in Karur District, as per the customs prevailing in the Hindu Community and the marriage is still subsisting.

(b) The petitioner further stated that the marriage expenses have been equally borne by both the petitioner and respondent family. At the time of marriage, the petitioner provided 2 sovereigns gold for Mangalsutra and some gold jewels to the respondent. The respondent family provided some household articles and few gold ornaments to the petitioner, as per custom rituals for the marriage as seervarisai and the same is in the custody of the respondent.



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(c) The petitioner further stated that after marriage, both were living in the matrimonial house for two years, after which they shifted to Rayanoor to a rented house from 2003 to 2004. Again, they shifted their house to Anna Nagar in Karur Town till 2013, till date both are residing in the same place.

(d) The petitioner further stated that from the date of marriage, the respondent was suspicious about the character of the petitioner. Due to the above, she developed hatred feeling against the petitioner and used to quarrel with him without any valid reason. The petitioner consoled her, with the hope that one day or another the respondent will realise and life will become harmonious. Whenever the respondent picked up quarrels, she used filthy language against the petitioner and threatened that she will go to any extent, blackmailed the petitioner and treated him cruelly.

(e) The petitioner further stated that due to their lawful wedlock, two male children were born, namely, S.Sri Jith Kumar on 30.07.2002 at Iyerpadi Hospital at Valparai, Coimbatore District and S.Deva Darshan on 16.04.2006 at V.C Hospital, Karur. The petitioner



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spent the basic necessities, education fees, etc., for their children. The elder son is studying 8th standard in Oxford Matriculation School, Udumalpet, and the second child is studying 4th standard in Shri Sankara Vidyalaya Matriculation School, Karur.

(f) The petitioner further stated that now he is working in a textile viz., Master Linen Inca Private Concern, the respondent entered into the working place, caused inconvenience, and act adverse against the petitioner. The respondent keep quiet for few days and thereafter picking up quarrel for unnecessary reason and abused him with filthy language due to her suspicious character. The respondent had completed her Post Graduate course and working as a Development Manager in HDFC Bank earning a sum of Rs.20,000/- as monthly salary, she is also doing money laundering business and earning Rs.50,000/- per month towards interest. She is not giving respect to the petitioner and tortured him. Whenever the petitioner tried to convince her, she did not hear his words.

(g)The petitioner further stated that the respondent with the evil advice from her family picked up quarrel, uttered unwanted words and started giving complaint against the petitioner before the Police. The



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petitioner tried to convince the respondent, the Police Officials also advised the respondent to lead a happy life. The petitioner keeping in mind, the future life of the children tolerated the atrocities meted out to him by the respondent with the hope that she would change her character one day or other and live with him peacefully.

(h)All the efforts taken by him was in vein. The family members of the respondent also supported her, whenever a complaint was made by the respondent. The family members entered into the house of the petitioner with third parties and assaulted the petitioner and caused injuries to him and threatened him that they will file criminal case against him. The attempts made by the petitioner to change the attitude of the respondent ends unsuccessful.

(i)The petitioner further stated that on 03.11.2014 after finishing his work, he came to his residence during night hours and the respondent created quarrel around 1.30 p.m., and tried to hang herself, the petitioner was shocked and feared after seeing the activities of the respondent, later in the early morning, the respondent called her parents and they came with their associates and started to attack the petitioner



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with deadly weapons and caused serious injuries to him. A criminal complaint was lodged against the respondent and her family members, by the Police Officials in crime No.755 of 2014 and counter case has also been filed against the petitioner, he was much humiliated and was in serious threat and apprehend danger, now residing away.

(j)The respondent threatened the petitioner even now and then negotiating for money. She is very adamant in nature and could go for any limit. Her family members has strong political background, they could cause danger to the petitioner. The petitioner as a dutiful husband discharged his duties to the respondent with love and affection, but she failed to act as dutiful wife.

(k)The petitioner further stated that both the petitioner and the respondent were living separately in view of the adamant nature of the respondent and she will not change her attitude. The marriage between the petitioner and the respondent has broken down irretrievably and there is no meaning in living with the respondent and there is no possibility of reunion in future and no possibility of resumption of cohabitation. Hence, this petition is filed for divorce as against the respondent on the ground of cruelty.



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3. Brief averment contained in the counter filed by the

respondent are as follows:

(a) The respondent denied the entire allegations contained in the petition. She admitted the marriage. At the time of marriage, the petitioner gave $\frac{1}{2}$ sovereign mangalsutra, $\frac{1}{4}$ Sovereign gold ring to the respondent. The respondent was provided with 23 sovereign gold jewel and for the petitioner, 2 sovereign gold chain and 1 sovereign ring was provided by the responded family. Apart from that 2 sovereign, each was given to the grandchildren by her mother, totally 30 sovereign was given to her. All the jewels were mortgaged by the petitioner for a sum of Rs.10 lakhs to construct house where the petitioner and respondent were living, now he is not in a position to pay the interest. She is not possessed any jewels with her.

(b) The respondent further stated that after their marriage, the respondent was living with the petitioner, his parents, his sisters Rajalakshmi, Geeta, and the children of his sister in the same house. She was ill-treated by the parents of the petitioner and his sisters, they are in the habit of chase her to her parental home and also abused her. Sisters of



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the petitioner treated the respondent cruelly and therefore, they have no other option, but a separate house was set up in Royanoor. Both the petitioner and respondent were living in that house happily upto the year 2005. Again, they have shifted to Anna Nagar in Karur District during 2005 to 2011 and return to his parents house at Thanthondrimalai. There was no problem between the petitioner and respondent when they were living separately. The respondent did not abuse the petitioner, rather the petitioner alone abused her and assaulted her.

(c)The respondent admitted the birth of two children but stated that the petitioner has not spent any money for the past 4 years, but he spent the income derived by him to several women with whom he had illegal contact, this respondent alone meted out the education expenditure of her children.

(d)The respondent further states that she employed in HDFC Bank but due to compulsion of the petitioner, she resigned her job. Since the petitioner has not maintained the family and his whereabouts are not known, she is working and earning meagre income and from out of that income she maintains the family.



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(e) She denied the allegation that she is a money lender. She

was living as dutiful wife but the petitioner alone lead wayward life, consume alcohol come to the house lately.

(f) The respondent further stated that the petitioner has not lodged any complaint against the respondent, but due to his atrocities, she has lodged a complaint against the petitioner and the police advised the petitioner to lead proper life. Though she was living in the joint family, tolerating the cruelty meted out to her, the petitioner after hearing the ill-advice of his sisters and mother treated her cruelly.

(g) The respondent admitted that a case was filed against herself and other in FIR no.755 of 2014, the petitioner alone assaulted her family members and a criminal case has been registered against the petitioner and his family members. Since the father of the petitioner is a retired police Inspector who influenced his Department to file a false case against the respondent.

(h) The respondent further stated that both the petitioner and respondent were living happily in separate house, few years back



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returned to her matrimonial house. The petitioner's mother wanted to constructed house and made her daughter to stay in that hose, after hearing the ill-advice of her son-in-law, planned to remarry the petitioner a girl in their relative in order to enjoy the property by her daughter, chased the respondent from her matrimonial home.

(i) The petitioner is having illegal relationship with a women and the same was questioned by the respondent, in order to spoil the respondents life a false case has been foisted. Now the petitioner is living separately with a unknown women and spent his earnings lavishly without maintaining his family.

(j) The respondent alone, educating her children. She is not in a position to pay interest for the jewels pledged and not able to educate the children, she wanted to rejoin with the petitioner to lead the life fruitfully.

(k) Hence, she prayed to dismiss the petition.

4. On the side of the petitioner, the petitioner was examined as P.W.1, Exs.P1 to Exs.P9 were marked. On the side of the respondent,



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the respondent was examined as R.W.1, Ex.R1 and Ex.R2 were marked.

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5. The trial Court after considering the evidence and records dismissed the petition. Aggrieved by the said order, the present Civil Miscellaneous Appeal has been filed by the appellant /petitioner/husband against the dismissal order with the following among other grounds :

(a) That the learned Family Judge, Karur ought to have granted divorce considering the age of the spouses and both of them were living separately for the entire 8 years litigation period and even during the said period there were exchange of criminal complaints.

(b) That the learned Family Judge, Karur failed to consider the attitude and aggressiveness of the respondent who pick up unnecessary quarrel even for trivial reasons and strongly believe that the appellant is having extra marital relationship on her hallucination.

(c) That the learned Family Judge, Karur, is misdirected itself in passing a erroneous direction overlooking the material evidence placed by the Petitioner.



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(d) That the learned Family Judge, Karur failed to consider that the respondent not only abused the Appellant but also visited his workplace and talk worse about his conduct and character which are nothing but false caused him severe mental agony.

(e) That the learned Family Judge, Karur failed to consider that the respondent ill-treated the appellant by comparing his lesser salary with that of the respondent who earns attractive salary by working with a private Bank employee.

(f) That the learned Family Judge, Karur ought to have granted divorce as the appellant suffered cruelty caused by the respondent by ill-treating, suspecting and by preferring false Police complaints where the appellant's parents faced huge inconvenience and harassments.

(g) That the learned Family Judge, Karur failed to consider that the appellant even become afraid of his life by the attitude of the



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respondent and her family members when they jointly and brutally attacked the appellant and his parents and hence, there are no ray of hope for reunion at any circumstances.

(h) That the judgment and decree of the Trial Court is liable to be set aside and hence, he prayed to allow the Civil Miscellaneous Appeal.

6. Heard the learned counsel on either side and perused the material available on records.

7. In this case, the points for consideration is

(i) Whether the order passed by the trial Court is proper or liable to be dismissed ?

8. The appellant/petitioner/husband filed the divorce petition under section 13(1)(ia) of Hindu Marriage Act, 1955, seeking divorce on the ground of cruelty.

9. Ex.P1 is the marriage invitation printed for their marriage.



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The petitioner and the respondent were married on 08.07.2001. Ex.P2 is the joint photograph of petitioner and the respondent at the time of marriage, Ex.P3 is the birth certificate shows that S.Srijith Kumar, son of petitioner and respondent was born on 30.07.2002. Ex.P4 is the birth certificate of another son of the petitioner and respondent namely, S.Dheva Darshan which shows that he was born on 16.04.2006. Ex.P5 is the ration card of the petitioner in which the name of the petitioner, respondent and the elder son were found a place. Ex.P6 is the FIR filed by the petitioner registered in Crime No.755/14, before the Pashupati Palayam Police Station against the respondent and her relative for the assault made by them on 05.11.2014. Ex.P7 is the copy of order passed in DVC No. 08 of 2016. by the Judicial Magistrate No.I, Karur. Ex.P8 is the copy of banner of Pattali Makkal Katchi, Karur District. Ex.P9 is the identity card of the respondent issued by Bharthi AXA Life Insurance Company Limited.

10. As per the evidence of the petitioner, it reveals that the marriage between the petitioner and respondent was solemnized on 08.07.2001 at Thanthondrimalai as per the customs prevailed in the Hindu religion. The respondent not denied the marriage and birth of the children.



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11. As per the petitioner that he has not demanded any dowry from the respondent, rather for the marriage he had provided mangalsutra, gold chain and a ring, totally eight sovereigns to the respondent.

12. On the contrary the respondent stated that the petitioner gave only $\frac{1}{2}$ sovereign mangalsutra, $\frac{1}{4}$ sovereign ring. But her family provided her 25 sovereign gold jewels for the marriage and 2 sovereigns chain and 1 sovereign ring was given to the petitioner, 4 sovereigns given to the grandchildren ear piercing festival. Totally 30 sovereigns given to her. She further stated that all the jewels were mortgaged for 10 lakhs by the petitioner for construction of the house for which she alone paying the interest.

13. However, during cross examination, she had admitted that in the petition filed by her for interim maintenance, she had stated that for her marriage, she was provided with five sovereigns gold jewels, and Rs.50,000 cash. She also admitted that in that petition that the petitioner gave her eight sovereigns jewels. Though she alleged that all



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the jewels given by her parents was mortgaged by the petitioner, for construction of house by his family for Rs.10 lakhs,proved as false because she herself admitted that in the interim application she stated that only 5 sovereigns was given to her.

14. As per the petitioner, the respondent suspected the petitioner and create unnecessary quarrel with the petitioner, she was in the habit of created problem with the neighbours and tortured him. The respondent in her counter stated that the petitioner was leading adultery life and spending his salary to several women and further stated that the petitioner is living with a woman, but she has not given any particulars for adultery life alleged to be leading by the petitioner, therefore, it is proved that she suspected him and treated him cruelly.

15. The respondent also raised certain allegations against the petitioner that she was ill-treated by her husband, his sisters and parents. She further stated that the petitioner was having illegal affair with an elderly woman, when the same was questioned by her, she was treated with cruelty. She further stated that the petitioner was not spent any money for her children. He used to spend the salary derived by him



lavishly.

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16. The records shows that the respondent filed D.V.C.No.08 of 2016 against the petitioner, her father-in-law, mother-in-law, sisters for causing mental torture, compensation, interim alimony with the allegation that the petitioner demanded dowry, threatened her with dire consequences. The above petition was partly allowed with the direction to pay a sum of Rs.3,000/- each to the minor children for food, clothing, educational expenditure and a sum of Rs.50,000/- for the respondent as compensation. In the above DVC petition, the petitioner filed receipts Ex.R2 to Ex.R.10 to show that he had incurred the educational expenditure of his children and the same was observed by the learned Judicial Magistrate in his judgment dated 14.10.2019. Therefore, the contention of the respondent that the petitioner has not spend any money for the education of the children, proved as false.

17. Though the respondent alleged that she was treated cruelly, but she has not produced any evidence for the same, further she has not filed any criminal case as issued notice to the petitioner for such allegation till the year 2015.



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18. On the contrary, the records produced by the petitioner

reveals that the petitioner filed a Criminal complaint against the respondent and his family member in Crime No.755 of 2014 and the same was taken on file in C.C.No.30 of 2015 by the Judicial Magistrate No.I, Karur, he also filed H.M.O.P. No.265 of 2014 for divorce on the ground of cruelty. Soon after the above petition, the respondent filed petition under Section 12 of The Protection of Women from Domestic Violence Act, 2005, in DVC No. 08 of 2016, before that she has not filed any petition for maintenance or cruelty.

19. During cross-examination, the respondent admitted that a complaint was lodged against her before the Pasupathi Palayam Police Station, for the offence of assaulting her parents-in-law. She admitted that during the same year, another complaint was lodged against the respondent and her family member for assault of the petitioner and his family members and the case was taken on file in C.C No.755 of 2014 and the same is pending, apart from that, another complaint in FIR No.15 of 2015 was filed against the respondent for attacked the petitioner and his mother. The above records proved that both petitioner and the respondent were in strained relationship.



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20. During cross-examination, the respondent further admitted that both herself and the petitioner were living separately for the past seven years. She filed DVC petition against the petitioner only after the petitioner filed a complaint against the petitioner and her family members and after the divorce petition was against the respondent. It is proved that the respondent stated certain allegations viz., cruelty, adultery and not maintaining the children and mortgaged her jewels to construct building but all are proved as false.

21. If the petitioner caused cruelty continuously, she would have filed criminal complaint against the petitioner, but no such complaint filed till the petitioner filed divorce petition and a criminal complaint against the respondent for the assault made by the respondent and her family members to the petitioner and his family members.

22. On careful analysis we satisfied that the respondent alone caused cruelty towards the petitioner and his family members and therefore, the petitioner was living separately for several years. During the appeal the parties were appeared, conciliation made and parties are not willing for any compromise. Under Section 13(i-a) of the Hindu



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Marriage Act, one of the ground for divorce is that after the solemnization of marriage treated the petitioner with cruelty, but there is no explanation for mental cruelty in the section.

23. In this connection, we rely upon the following judgements in ***N.G. Dastane vs. S. Dastane reported in AIR 1975 SC 1534*** the Hon'ble Apex Court set out definition of cruelty in which paragraph No.29 reads as follows :

“29.....The High Court then refers to the decisions of some of the Indian Courts to illustrate "The march of the Indian Courts with the English Courts" and cites the following passage from D. Tolstoy's "The Law and Practice of Divorce and Matrimonial Causes" (Sixth Ed., p. 61):

Cruelty which is a ground for dissolution of marriage may be defined as wilful and unjustifiable conduct of such a character as to cause danger to life, limb or health, bodily or mental, or as to give rise to a reasonable apprehension of such a danger.”

24. In ***K. Srinivas Rao vs. D.A. Deepa reported in (2013) 5 SCC 226***, in which paragraph Nos.26, 27 & 28 are as follows :



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“26. We are also satisfied that this marriage has irretrievably broken down. Irretrievable breakdown of marriage is not a ground for divorce under the Hindu Marriage Act, 1955. But, where marriage is beyond repair on account of bitterness created by the acts of the husband or the wife or of both, the courts have always taken irretrievable breakdown of marriage as a very weighty circumstance amongst others necessitating severance of marital tie. A marriage which is dead for all purposes cannot be revived by the court's verdict, if the parties are not willing. This is because marriage involves human sentiments and emotions and if they are dried-up there is hardly any chance of their springing back to life on account of artificial reunion created by the court's decree.

27. In V. Bhagat vs. D. Bhagat (1994) 1 SCC 337 this Court noted that divorce petition was pending for eight years and a good part of the lives of both the parties had been consumed in litigation, yet the end was not in sight. The facts were such that there was no question of reunion, the marriage having irretrievably broken down. While dissolving the marriage on the ground of mental cruelty this Court observed that irretrievable breakdown of marriage is not a ground by itself, but, while scrutinizing the evidence on record to determine whether the grounds alleged are made out and in determining the relief to be granted the said



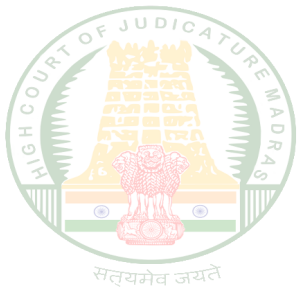
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circumstance can certainly be borne in mind. In Naveen Kohli, where husband and wife had been living separately for more than 10 years and a large number of criminal proceedings had been initiated by the wife against the husband, this Court observed that the marriage had been wrecked beyond the hope of salvage and public interest and interest of all concerned lies in the recognition of the fact and to declare defunct de jure what is already defunct de facto. It is important to note that in this case this Court made a recommendation to the Union of India that the Hindu Marriage Act, 1955 be amended to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce.

28. In the ultimate analysis, we hold that the Respondent-wife has caused by her conduct mental cruelty to the Appellant-husband and the marriage has irretrievably broken down. Dissolution of marriage will relieve both sides of pain and anguish. In this Court the Respondent-wife expressed that she wants to go back to the Appellant-husband, but, that is not possible now. The Appellant-husband is not willing to take her back. Even if we refuse decree of divorce to the Appellant-husband, there are hardly any chances of the Respondent-wife leading a happy life with the Appellant-husband because a lot of bitterness is created by the conduct of the Respondent-wife”.



25. In *Suman Kapur vs. Sudhir Kapur* reported in (2009) 1

WEB CO SCC 422, in which paragraph Nos.23 to 29, 33 and 34 are as follows

23. In Gollins v. Gollins 1964 AC 644 : (1963)2 All ER 966, Lord Reid stated:

No one has ever attempted to give a comprehensive definition of cruelty and I do not intend to try to do so. Much must depend on the knowledge and intention of the respondent, on the nature of his (or her) conduct, and on the character and physical or mental weakness of the spouses, and probably no general statement is equally applicable in all cases except the requirement that the party seeking relief must show actual or probable injury to life, limb or health.

24. Lord Pearce also made similar observations;

It is impossible to give a comprehensive definition of cruelty, but when reprehensible conduct or departure from normal standards of conjugal kindness causes injury to health or an apprehension of it, is, I think, cruelty if a reasonable person, after taking due account of the temperament and all the other particular circumstances would considered that the conduct complained of is such that this spouse should not be called on to endure it.

[see also Russell v. Russell (1897) AC 395 : (1895-99) All ER Rep 1].

25. The test of cruelty has been laid down by this court in the leading case of N.G. Dastane v. S. Dastane [1975] 3 SCR 967 thus

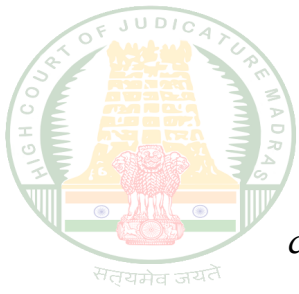


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The enquiry therefore has to be whether the conduct charges as cruelty is of such a character as to cause in the mind of the petitioner a reasonable apprehension that it will be harmful or injurious for him to live with the respondent....

26. In Sirajmohmedkhan Janmohamadkhan v. Haizunnisa Yasinkhan and Anr [1982] 1 SCR 695 , this Court stated that the concept of legal cruelty changes according to the changes and advancement of social concept and standards of living. It was further stated that to establish legal cruelty, it is not necessary that physical violence should be used. Continuous cessation of marital intercourse or total indifference on the part of the husband towards marital obligations would lead to legal cruelty.

27. In Shobha Rani v. Madhukar Reddi [1988] 1 SCR 1010 , this Court examined the concept of cruelty. It was observed that the term 'cruelty' has not been defined in the Hindu Marriage Act. It has been used in Section 13(1)(ia) of the Act in the context of human conduct and behavior in relation to or in respect of matrimonial duties or obligations. It is a course of conduct of one spouse which adversely affects the other spouse. The cruelty may be mental or physical, intentional or unintentional. If it is physical, it is a question of degree which is relevant. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the other spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the



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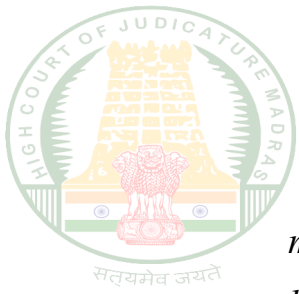


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complaining spouse. There may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Mens rea is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment.

28. In V. Bhagat v. D. Bhagat AIR 1994 SC 710 , the Court observed;

Mental Cruelty in Section 13(1)(ia) can broadly be defined as that conduct which inflicts upon the other party such mental pain and suffering as would make it not possible for that party to live with the other. In other words, mental cruelty must be of such a nature that the parties cannot reasonably be expected to live together. The situation must be such that the wronged party cannot reasonably be asked to put up with such unintentional. If it is physical, it is a question of fact and degree. If it is mental, the enquiry must begin as to the nature of the cruel treatment and then as to the impact of such treatment on the mind of the spouse. Whether it caused reasonable apprehension that it would be harmful or injurious to live with the other, ultimately, is a matter of inference to be drawn by taking into account the nature of the conduct and its effect on the complaining spouse. There



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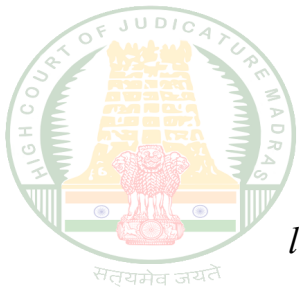


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may, however, be cases where the conduct complained of itself is bad enough and per se unlawful or illegal. Then the impact or the injurious effect on the other spouse need not be enquired into or considered. In such cases, the cruelty will be established if the conduct itself is proved or admitted. The absence of intention should not make any difference in the case, if by ordinary sense in human affairs, the act complained of could otherwise be regarded as cruelty. Intention is not a necessary element in cruelty. The relief to the party cannot be denied on the ground that there has been no deliberate or wilful ill-treatment or conduct and continue to live with the other party. It is not necessary to prove that the mental cruelty is such as to cause injury to the health of the petitioner. While arriving at such conclusion, regard must be had to the social status, educational level of the parties, the society they move in, the possibility or otherwise of the parties ever living together in case they are already living apart and all other relevant facts and circumstances which it is neither possible nor desirable to set out exhaustively. What is cruelty in one case may not amount to cruelty in another case. It is a matter to be determined in each case having regard to the facts and circumstances of that case. If it is a case of accusations and allegations, regard must also be had to the context in which they were made.

29. This Court in Chetan Dass v. Kamla Devi [2001]3SCR20 , stated;

Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect,



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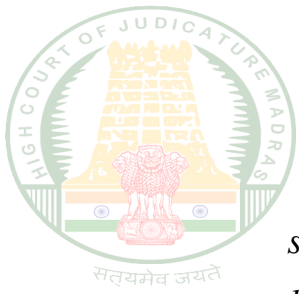
love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. The matrimonial conduct has now come to be governed by statute framed, keeping in view such norms and changed social order. It is sought to be controlled in the interest of the individuals as well as in broader perspective, for regulating matrimonial norms for making of a well-knit, healthy and not a disturbed and porous society. The institution of marriage occupies an important place and role to play in the society, in general. Therefore, it would not be appropriate to apply any submission of "irretrievably broken marriage" as a straitjacket formula for grant of relief of divorce. This aspect has to be considered in the background of the other facts and circumstances of the case".

.....

33. It was further stated:

Each case depends on its own facts and must be judged on these facts. The concept of cruelty has varied from time to time, from place to place and from individual to individual in its application according to social status of the persons involved and their economic conditions and other matters. The question whether the act complained of was a cruel act is to be determined from the whole facts and the matrimonial relations between the parties. In this connection, the culture, temperament and status in life and many other things are the factors which have to be considered.

The legal concept of cruelty which is not defined by the



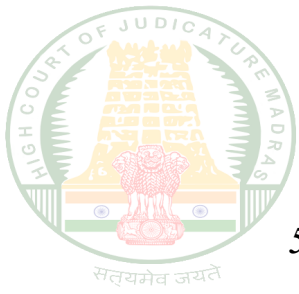
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statute is generally described as conduct of such character as to have caused danger to life, limb or health (bodily and mental) or to give rise to reasonable apprehension of such danger. The general rule in all questions of cruelty is that the whole matrimonial relations must be considered, that rule is of a special value when the cruelty consists not of violent act but of injurious reproaches, complaints, accusations or taunts. It may be mental such as indifference and frigidity towards the wife, denial of a company to her, hatred and abhorrence for wife, or physical, like acts of violence and abstinence from sexual intercourse without reasonable cause. It must be proved that one partner in the marriage however mindless of the consequences has behaved in a way which the other spouse could not in the circumstances be called upon to endure, and that misconduct has caused injury to health or a reasonable apprehension of such injury. There are two sides to be considered in case of apprehension of such injury. There are two sides to be considered in case of cruelty. From the appellants, ought this appellant to be called on to endure the conduct? From the respondent's side, was this conduct excusable? The Court has then to decide whether the sum total of the reprehensible conduct was cruel. That depends on whether the cumulative conduct was sufficiently serious to say that from a reasonable person's point of view after a consideration of any excuse which the respondent might have in the circumstances, the conduct is such that the petitioner ought not be called upon to endure.

34. Recently, in Samar Ghosh v. Jaya Ghosh (2007)4 SCC



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511 , this Court held;

No uniform standard can ever be laid down for guidance, yet we deem it appropriate to enumerate some instances of human behavior which may be relevant in dealing with the cases of 'mental cruelty'. The instances indicated in the succeeding paragraphs are only illustrative and not exhaustive.

(i) On consideration of complete matrimonial life of the parties, acute mental pain, agony and suffering as would not make possible for the parties to live with each other could come within the broad parameters of mental cruelty.

(ii) On comprehensive appraisal of the entire matrimonial life of the parties, it becomes abundantly clear that situation is such that the wronged party cannot reasonably be asked to put up with such conduct and continue to live with other party.

.....

(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty."

26. The above judgment is squarely applicable to the presence case. The appellant proved that the respondent cruelly treated



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him and the acts of the respondent clearly proved that she made number of allegations against him and made his life miserable, and the petitioner and the respondent were living separately for several years, the respondent in order to defend the divorce petition made several allegations against the appellant but proved false, but it is proved that due to her cruel act a criminal complaint was filed and pending before the criminal Court. She falsely stated allegations against the petitioner and treated him cruelly since there is no chance for reunion, the Court deem fit to allow the Civil Miscellaneous Appeal.

27. In the result, the Civil Miscellaneous Appeal is allowed.

The fair and decreetal order passed in HMOP No.24 of 2022, dated 31.10.2022, by the Family Court, Karur is set aside and the marriage between the petitioner and the respondent solemnized on 08.07.2001 is dissolved. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S., J.) & (R.P., J.)
27.01.2025

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
RM



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To

1.The Judge,
Family Court,
Karur.

Copy to

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



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R.SWAMINATHAN, J.
AND
R.POORNIMA, J.

RM

Judgment in
C.M.A.(MD)No.429 of 2023

27.01.2025