



C.M.A. (MD)No.189 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 24.06.2025

Pronounced on : 29.08.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.189 of 2020

and

C.M.P.(MD)No.3202 of 2020

Lourdhu Therasa @ Lilly

... Appellant/
Respondent

Vs.

Amalraj

... Respondent/
Petitioner

Prayer : This Civil Miscellaneous Appeal filed under Section 55 of Indian Divorce Act, 1869, to set aside the judgment and decree passed in I.D.O.P.No.65 of 2013 on the file of the III Additional District Judge, Tiruchirappalli, dated 30.10.2018.

For Appellant : Mr.S.Savari Prakash

For Respondent : Mr.G.Aravinthan



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JUDGMENT

The Civil Miscellaneous Appeal is directed against the order passed in I.D.O.P.No.65 of 2013 dated 30.10.2018 on the file of the III Additional District Court, Tiruchirappalli, granting divorce on the grounds of desertion and cruelty.

2. It is not in dispute that the respondent married the appellant on 10.11.2006 as per the Christian Rites and Customs and due to their wedlock, they were blessed with a female child, born on 24.08.2008.

3. For the sake of convenience and brevity, the parties herein after will be referred to as per their status / ranking in the trial Court.

4. The petitioner, by alleging that he was deserted by the respondent and she had treated him with cruelty, filed a petition in I.D.O.P.No.65 of 2013 claiming divorce. The respondent filed a counter statement raising serious objections.

5. During trial, the petitioner examined himself as P.W.1 and



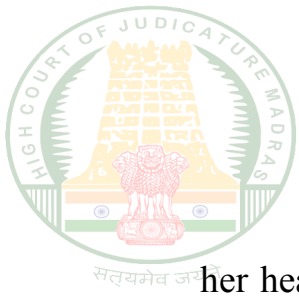
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exhibited five documents as Ex.P.1 to Ex.P.5. The respondent examined herself as R.W.1 and exhibited one document as Ex.R.1.

6. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, passed the impugned order dated 30.10.2018 by holding that the petitioner has proved the twin grounds of desertion and cruelty, allowed the petition and thereby granted divorce and rejected the claim of the respondent for permanent alimony for herself and for her minor daughter. Aggrieved by the order granting divorce, the wife has preferred the present appeal.

7. a) The case of the petitioner is that the petitioner realized that the respondent is a mentally challenged person and she is not in a position to take care of herself. The respondent used to repeat the same thing for more than 10 times and she does not know as to how to wear saree nor cooking. The respondent is in the habit of not taking bath for 3 to 4 days and only on the compulsion of the petitioner and his parents, she used to take bath. Since the respondent does not know any household work, the petitioner was constrained to engage a servant maid. As the respondent did not keep

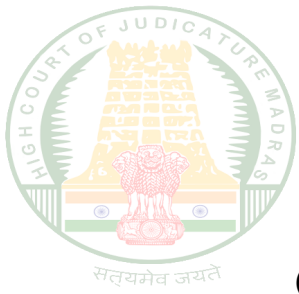


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her head clean, she had lice in her head and hence, the petitioner was not able to sleep with the respondent. When the petitioner slept with the respondent on first night, lice got into the petitioner's hair and as a result, he suffered a lot. Though the petitioner bought medicine, the respondent refused to use them and moreover, she did not even know how to use it.

(b) The respondent used to have menstrual periods for 10 days and she used to say that she is having stomach pain 1 week before and after periods. Hence, the petitioner was able to have relationship with the respondent only two days in a month. Since the respondent was having lice issues continuously, the respondent used to sleep on the ground and the respondent in the cot. When the behavior and conduct of the respondent was informed to her parents, they told that she was brought up in a protected environment and her mother used to take care of everything for her. When the petitioner suggested to consult a Doctor, the respondent's parents refused and took the respondent to their house promising to provide treatment. After three months, they brought the respondent back to the petitioner's house. Thereafter, the respondent used to reside one month in the petitioner's house and three months in her parental home.



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(c) The respondent gave birth to a female child Mariya Petricia on 24.08.2008 and every birthday of their child was being celebrated at the respondent's house. As per the request of the respondent's parents, on 06.09.2009, the petitioner had taken the respondent and dropped her at her parental home and thereafter, despite repeated request of the petitioner, the respondent's parents refused to send back the respondent to the matrimonial home. The respondent was residing in her parental home till May 2012. The petitioner has then sought the help of their Church Father Thanislass of Musiri and as per the request of the Father, he agreed for a separate residence and they started to live in the top floor of the respondent's father house from 03.06.2012. The petitioner's family for the first time on 24.08.2012 celebrated the petitioner's child birthday. The petitioner had invited his parents and relatives. The respondent's parents, after knowing about the celebration, came to the petitioner's house on 25.08.2012 and took away the respondent and the child without even informing the same to the petitioner or his parents. While leaving the matrimonial home, the respondent had taken away the jewels and household articles belonging to her and their child. After coming to know about the same from his neighbors, the petitioner made several attempts to



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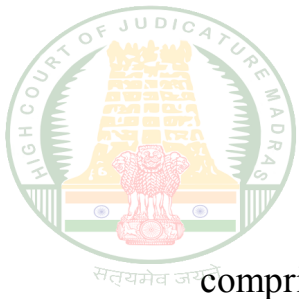
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reunite with the respondent but the respondent's parents refused to send the respondent and the child.

(d) The respondent lodged a false complaint before the All Women Police Station, Thanjavur on 22.07.2013 claiming that the petitioner and his family members demanded dowry and harassed her and that they came to the house of the respondent's parents and quarreled with her demanding dowry. After enquiry, the complaint was closed as there was no truth in the complaint allegations. There is no possibility of living with the respondent anymore and if the petitioner continues to live with her, his mind will be spoiled and the respondent may lodge false complaints against him and his family members. Since the respondent has deserted the petitioner without any justifiable cause and had treated him with cruelty, the petitioner was forced to file the above petition for divorce.

8. The defence of the respondent is of specific denial of the allegations / charges levelled by the petitioner in his main petition.

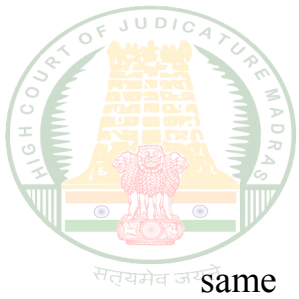
9. a) The case of the respondent is that after marriage, the petitioner and the respondent lived with the petitioner's parents as joint family



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comprising the petitioner's brother and married sisters. The petitioner, who looked after the lathe industry of his father, used to come home in the nights and after having food with his mother, goes off to sleep. The petitioner did not have the slightest inclination of love or affection towards the respondent. The respondent was treated to be another domestic unpaid servant of the household with a licensed tag of a wife. After three to four months, the petitioner and his parents, sisters, brother and brother-in-law started demanding a huge sum of money from the respondent to expand the family lathe industry. The respondent fearing to burden her father, who was a retired Tashildar, without whisper a word, underwent all the sufferings and humiliations met out to her. The respondent was isolated and made to sit and stand as an untouchable and she was not given proper and enough food, was made to do all the household work and cook for the entire family, was avoided in front of the relatives and was not allowed to take part in any functions. The petitioner's parents terminated the services of their paid servant maid. When the respondent was four months pregnant having gained knowledge that the foetus is a female baby, the mother-in-law and sister-in-law of the respondent compelled and pressurized her to abort the child and when the



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same was refused, they started to torture her physically, verbally, emotionally and mentally. They also emotionally threatened the respondent that she will be separated from the petitioner and that the petitioner would be married off to an affluent family. The parents of the respondent, after coming to know about the plight of the respondent from the neighbors, had taken her to Thanjavur when she was seven months pregnant. When the respondent has given birth to the female child on 24.08.2008, the petitioner and his family visited the child on the first time at the hospital and commented that the child was dark in color and that she is not in line with their family color and thereafter they did not visit the child even for courtesy. When the respondent's parents arranged for baptism of the child at Adaikkala Matha Church, Thanjavur, the petitioner and his family attended the function and openly abused the child in the presence of their relatives and threatened that if she wants to continue the matrimonial life with the petitioner, she has to bring Rs.5 lakhs or else, she can stay back at her parents' home.

(b) The petitioner's parents in the meanwhile arranged marriage for their younger son on 24.08.2009 and for the sake of showing off before the relatives, the petitioner hastily took the respondent and her child to the

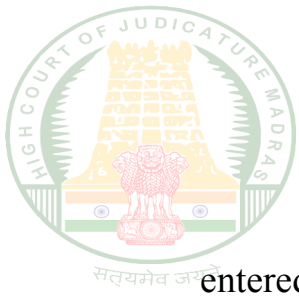


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matrimonial home in January 2009 to attend the marriage. The birthday of the petitioner's child was also celebrated on the date of petitioner's brother marriage. After the marriage of the petitioner's brother, the petitioner's parents asked the petitioner to send the respondent out of the matrimonial home until she brings Rs.5 lakhs for the improvement of their family business and hence, the respondent and her child were under the care and custody of her parents at Thanjavur from 16.09.2009. The petitioner and his family did not return back even to find out how the respondent and the child are living.

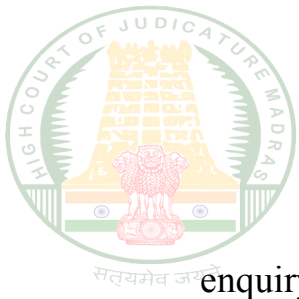
(c) The respondent's father in order to save the matrimonial life of his daughter made efforts through relatives and church authorities. The Parish Priest of Musiri Church assured the respondent and her parents that the petitioner and his parents will not create any problem in future and will arrange a top floor for separate living of the petitioner and the respondent. Reposing utmost faith in the words of the Parish Priest, the respondent came back in May 2012 to the matrimonial home but the petitioner's parents and sisters have practically prevented the petitioner from living with the respondent in one way or another and neither allowed the petitioner to come to the first floor. On 22.08.2012, when the respondent



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entered into the house after laying the kolam, she heard her elder sister-in-law Sahayaleeli and mother-in-law asking the petitioner to keep open slightly the gas cylinder as and when chances arise. The respondent got panicked and was unable to sleep even in the night. The respondent's parents visited on 24.08.2012 to attend the birthday celebration of their grandchild but the petitioner and his parents and sisters threatened them with filthy words and accused of not paying their demand of Rs.5 lakhs and chased them out of the house. When the respondent protested, they have pushed the respondent along with the child out of the house and locked saying that the respondent cannot live with the petitioner without satisfying their demand. On 21.07.2013, the petitioner and his parents, sisters and brother along with some unknown person came to the respondent's parental home and demanded for the money and when the respondent answered that arrangements were being made, the parents and sisters of the petitioner shouted that nothing will work and threatened the respondent to sign blank papers and shouted that she can never live with the petitioner as arrangements for his marriage with one Ruby their uncle's daughter is being made. Immediately, the respondent lodged a complaint before the All Women Police Station, Thanjavur on 22.07.2013. After



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enquiry, the police directed the petitioner and his family to return the gold jewels, articles and money but the petitioner has filed the above petition for divorce to escape the clutches of law. The petitioner alone had deserted the respondent and her child and caused mental cruelty. The petitioner has totally neglected to maintain his child till date. Hence, the divorce petition is liable to be dismissed. The respondent is entitled to claim Rs.30 lakhs permanent alimony and Rs.50 lakhs towards the maintenance of their child.

10. The points for consideration are,

1. *Whether the trial Court erred in holding that the respondent deserted the petitioner from 24.08.2012 without any justifiable reason, despite showing that there was no two year statutory period of desertion prior to the filing of the divorce petition?*
2. *Whether the trial Court erred in placing the burden of proof on the respondent and deciding that the complaint given to the police would amount to cruelty, despite showing that the petitioner has not shown that the complaint lodged by the*



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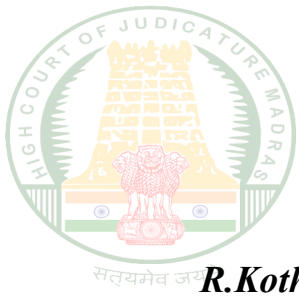
respondent was a false and motivated one?

3. *Whether the petitioner has proved the grounds of desertion and cruelty?*
4. *Whether the appeal is liable to be allowed?*

Points 1 to 4:

11. The petitioner has claimed divorce on the grounds of desertion and cruelty. Even according to the petitioner, when the respondent's parents visited the petitioner's house on 25.08.2012, they had taken the respondent and the child along with them and thereafter, despite the petitioner's efforts for reunion, the respondent has not returned to the matrimonial home and thereby deserted the petitioner without any justifiable cause. Section 10(1)(ix) of the Indian Divorce Act contemplates that a husband or wife can seek divorce if the other spouse has deserted them for a continuous period of atleast two years immediately preceding the presentation of the divorce petition.

12. The learned counsel appearing for the respondent would rely on a decision of the Division Bench of this Court in *P.Manimekalai Vs.*



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R.Kothandaraman reported in **2010 (6) CTC 80**, wherein also, desertion under Section 13(1)(i-b) of Hindu Marriage Act was taken as a ground for divorce and this Court has observed,

“28. Under Section 13(1)(i-b) of Hindu Marriage Act, the Respondent/Husband has to prove (i) that there was desertion for a continuous period of two years immediately preceding the presentation of the petition; (ii) the desertion was without reasonable cause and without the consent or against the wish of the Petitioner/Appellant herein. The desertion requires four important elements viz., (i) factum of separation, (ii) necessary intention to put an end to matrimonial consortium and cohabitation permanently, (iii) want of reasonable cause, and (iv) want of consent or against the wish of the other spouse.

29. In Lachman Utamchand Kirpalani Vs. Meena alias Mota, the Supreme Court has held that where the Wife refused resumption of marital cohabitation for a reasonable cause as there was hostile atmosphere and ill-treatment in the Husband's house it does not imply animus deserendi. Mere leaving the matrimonial home is not sufficient. Animus deserendi at the time of leaving the matrimonial home has to be proved. Where a Wife is forced to live away from the matrimonial house because of the ill-treatment, it cannot amount to desertion.

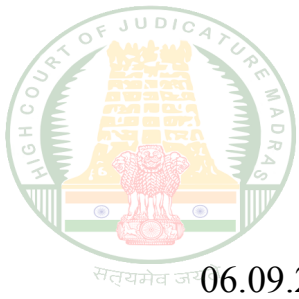


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30. *"Desertion" for the purpose of seeking divorce under the Act, means the intentional permanent forsaking and abandonment of one spouse by the other without that other's consent and without reasonable cause. In other words, it is a total repudiation of the obligations of marriage. Desertion is not the withdrawal from a place but from a state of things. Desertion, therefore, means withdrawing from the matrimonial obligations i.e., not permitting or allowing and facilitating cohabitation between the parties. Desertion is not a single act complete in itself, it is a continuous course of conduct to be determined under the facts and circumstances of each case. The party seeking divorce on the ground of desertion is required to show that he or she was not taking the advantage of his or her own wrong. (vide Savitri Pandey Vs. Prem Chandra Pandey)"*

13. Essentially both the physical separation (factum) and intention to desert (animus) must be present for desertion to be considered as a valid ground for divorce and more importantly, desertion must have been continuous for atleast two years immediately before the petition for divorce is filed. In the present case, even according to the petitioner, though the respondent has not returned to the matrimonial home from



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06.09.2009, after intervention of Parish Priest of Musiri and others, have started cohabitation from 03.06.2012. As rightly pointed out by the learned counsel appearing for the respondent, even according to the petitioner, the respondent left the matrimonial home thereafter on 25.08.2012 but admittedly, the present divorce petition came to be filed on 02.08.2013. Considering the above, it is very clear that the mandatory two years period of desertion is completely absent in the case on hand but the learned trial Judge, without considering the same, by simply holding that the desertion of the respondent from 24.08.2012 stands established, proceeded to grant divorce on the ground of desertion. Hence, this Court has no hesitation in holding that the above finding is legally unsustainable and the same is liable to be set aside.

14. Now turning to the ground of cruelty, the learned trial Judge referring to the allegations levelled by the petitioner against the respondent, has rightly observed that the same cannot be termed as acts of cruelty.

15. Notably, despite claiming the respondent is mentally challenged,



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the petitioner did not apply for a guardian to represent her in the divorce proceedings, instead filing the petition directly against her. The petitioner also failed to provide any evidence showing the respondent's alleged mental issues. Although they spent their first night together and attended a reception at the respondent's parental home, the petitioner did not examine his family members, neighbors, or any other witnesses to substantiate the claim of mental illness or abnormal behavior. The learned trial Judge correctly characterized the allegations as flimsy and insufficient to establish cruelty.

16. It is undisputed that the respondent lodged a complaint with the All Women Police Station on 22.07.2013, alleging that the petitioner and his family demanded money and quarreled with her parents on 21.07.2013. According to the respondent, the police directed the petitioner to return the gold jewels, articles, and money after an enquiry. However, the petitioner claimed that the police found the complaint to be false and advised the respondent and her parents. The trial Court concluded that the complaint was false, citing lack of evidence to support the dowry demand. However, this conclusion is flawed, as the complaint copy was not produced, and the



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petitioner did not summon the police or obtain the complaint. Under Section 8A of the Dowry Prohibition Act, the burden of proof lies with the accused to prove innocence once some basic evidence is presented. The trial Court's decision to place the burden on the respondent is unjustified and unsustainable.

17. The learned trial Judge has relied on a decision of the Hon'ble Supreme Court in ***K.Srinivasa Rao Vs. D.A.Deepa*** reported in **2013 (5) SCC 226** and observed that a false criminal complaint preferred by either spouse, constitutes a matrimonial cruelty, entitling the other spouse to claim divorce. But in the above decision case, the wife has lodged a complaint against her husband and his family members raising serious allegations that the mother of the husband asked her to sleep with her father-in-law but such a complaint was found to have been falsely lodged and the relevant passage is extracted hereunder for better appreciation;

“In the instant case, complaint was filed by respondent/wife against appellant/husband and his family members under Section 498-A IPC wherein besides alleging ill treatment and harassment for dowry, it was alleged that mother of appellant/husband had asked respondent/wife to sleep with her father-in-law. Said



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complaint was found to have been falsely lodged out of frustration on appellant husband's refusal to cohabit. Thus, held, conduct of respondent/wife in filing a complaint making unfounded, indecent and defamatory allegation against her mother-in-law, in filing revision seeking enhancement of sentence awarded to appellant/husband, in filing appeal questioning acquittal of appellant/husband and his parents indicates that she made all attempts to ensure that he and his parents were put in jail and he was removed from his job, which certainly constituted cruelty.”

18. The learned counsel appearing for the petitioner would rely on a decision of the Hon'ble Supreme Court in ***Joydeep Majumdar Vs. Bharti Jaiswal Majumdar*** reported in ***(2021) 2 SCC 742***, wherein, the wife had made several defamatory complaints to the husband's superiors in the Army for which, the Court of inquiry was held by the Army authorities and consequently the husband's career progress got affected and that the wife had also made complaints to other authorities such as the State Commission for Women and posted defamatory materials in other platforms and as a result of which, the husband's career and reputation had suffered. In that fact situation, the Hon'ble Supreme Court has observed,



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“13. Proceeding with the above understanding, the question which requires to be answered here is whether the conduct of the respondent would fall within the realm of mental cruelty. Here the allegations are levelled by a highly educated spouse and they do have the propensity to irreparably damage the character and reputation of the appellant. When the reputation of the spouse is sullied amongst his colleagues, his superiors and the society at large, it would be difficult to expect condonation of such conduct by the affected party.

14. The explanation of the wife that she made those complaints in order to protect the matrimonial ties would not in our view, justify the persistent effort made by her to undermine the dignity and reputation of the appellant. In circumstances like this, the wronged party cannot be expected to continue with the matrimonial relationship and there is enough justification for him to seek separation.”

19. The learned counsel appearing for the respondent would rely on a decision of the Division Bench of this Court in **A.Raja Vs. R.Santhosham** reported in **AIR 2024 Mad 207** and the relevant passage is extracted hereunder;

“14. The petitioner has deposed that the respondent

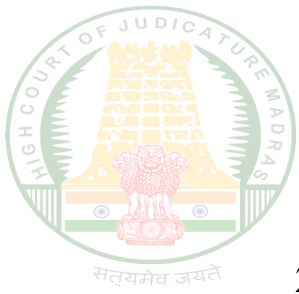


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gave a false complaint as if the petitioner demanded dowry. The said act of the respondent amounts to cruelty. However, the petitioner has neither produced the copy of the complaint nor has taken any steps to send for the complaint from All Women Police Station. On the other hand, the respondent in her evidence has deposed that in the month of May, 1995, she went to the petitioner's house along with her minor child. But the petitioner's family members refused to take them back and also did not allow her meet the petitioner. Further, in the month of May, 1996, the respondent approached the All Women Police Station, Kancheepuram and submitted a petition stating all her sufferings and the police officials summoned the petitioner and the petitioner also came to the police station and agreed and assured to take the respondent and her minor child back with him within a short span of time. However, he did not keep up his words. This Court is of the view that in the absence of proof that the respondent filed false dowry demand complaint, merely filing a complaint before All Women Police Station would not amount to cruelty. The petitioner has not proved that the respondent has filed a complaint under Dowry Prohibition Act. The respondent in her evidence has deposed that only with an intention to live together with the petitioner, she filed a complaint before All Women Police Station. Hence, this Court does not find any fault with the act of the respondent.”



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20. In the present case, the petitioner failed to demonstrate that the respondent's complaint was false. As observed by the Division Bench, merely filing a criminal complaint does not constitute cruelty. Here, even according to the petitioner, the respondent lodged a single complaint, which was closed. Notably, the petitioner filed the divorce petition on 02.08.2013, just 10 days after attending police inquiry regarding the complaint lodged on 22.07.2013, suggesting a hasty response.

21. The learned counsel appearing for the petitioner would rely on a decision of the Division Bench of this Court in ***Martin Sagayanadin Vs. Antoinette and another*** reported in (2019) 3 MLJ 106 and submit that since the parties have been living separately for over 13 years, no purpose would be served by maintaining the matrimonial bond and the marriage has irretrievably broken down. It is necessary to refer the relevant passage,

“48. The long separation between them had rendered the matrimonial life slip to a stage beyond retrieval. The matrimonial life between the appellant and the 1st respondent has irretrievably broken leaving little, in our view, no scope for re-union, at this stage. Thus, no useful purpose could be achieved by keeping the matrimonial tie alive when practically there is no



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possibility or chance for the couple to re-unite. Therefore, in the best interest of the appellant and the 1st respondent, it is desirable that the matrimonial relationship between them has to be snapped leaving the parties to decide their future course of living in the manner they wish.”

22. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***K.Srinivas Vs. K.Sunita*** reported in **2014 (3) MWN (Civil) 671**, wherein, the Hon'ble Apex Court has specifically observed that power to grant divorce on the ground of irretrievable breakdown of marriage is available with the Apex Court and the said power is not available to any other Court of law and the relevant passage is extracted hereunder;

“3. Irretrievable breakdown of marriage as a ground for divorce has not found statutory acceptance till date. Under Article 142 of the Constitution, the Supreme Court has plenary powers “to pass such decree or make such order as is necessary for doing complete justice in any case or order pending before it”. This power, however, has not been bestowed by our Constitution on any other Court. It is for these reasons that we have confined arguments only to the aspect of whether the filing of a false criminal complaint



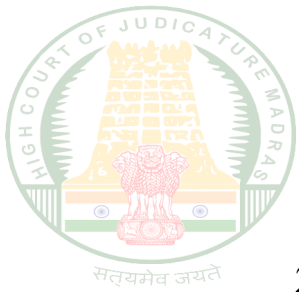
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sufficiently proves matrimonial cruelty as would entitle the injured party to claim dissolution of marriage. It will be relevant to mention that the Law Commission of India in its Reports in 1978 as well as in 2009 has recommended the introduction of irretrievable breakdown of marriage as a ground for dissolution of marriage; the Marriage Laws (Amendment) Bill of 2013 incorporating the ground has even received the assent of the Rajya Sabha. It is, however, highly debatable whether, in the Indian situation, where there is rampant oppression of women, such a ground would at all be expedient. But that controversy will be considered by the Lok Sabha.”

23. Considering the above, the learned trial Judge, without considering the evidence available on record and the legal position in proper perspective, has come to a decision in a mechanical fashion that the grounds of desertion and cruelty stand proved. Consequently, the judgment of the trial Court granting divorce is liable to be set aside. Considering the other facts and circumstances, this Court further decides that the respondent must be mulcted with costs throughout.



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24. In the result, this Civil Miscellaneous Appeal is allowed with costs throughout. The impugned judgment dated 30.10.2018 passed in I.D.O.P.No.65 of 2013 is set aside and the petition in I.D.O.P.No.65 of 2013 stands dismissed. Consequently, connected Miscellaneous Petition is closed.

29.08.2025

NCC : Yes/No
Index : Yes/No
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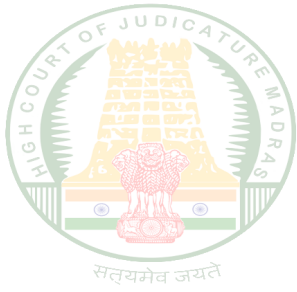
1. The III Additional District Judge,
Tiruchirappalli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Judgment made in
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and
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Dated : 29.08.2025