

C.M.A.(MD)Nos.549 and 550 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 12.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)Nos.549 and 550 of 2020

Emelda Florence

... Appellant in both C.M.As

Vs.

Anthoni Selvaraj

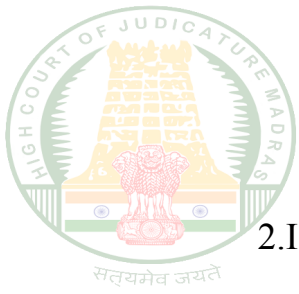
... Respondent in both C.M.As

COMMON PRAYER : Civil Miscellaneous Appeals filed under Section 55 of the Indian Divorce Act, 1988, to set aside the judgment and decree dated 13.02.2020 made in I.D.O.P.Nos.32 of 2015 and 1 of 2016, on the file of the learned Principal District Judge, Tiruchirappalli.

For Appellant : Mr.A.Haja Mohideen
(in both C.M.As)
For Respondent : Mr.P.Arun Jayaram
(in both C.M.As)

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed, challenging the order passed by the learned Principal District Judge, at Trichy, in I.D.O.P.Nos. 32 of 2015 and 1 of 2016, dated 13.02.2020.



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2.I.D.O.P.No.32 of 2015 was filed by the appellant wife, seeking divorce.

I.D.O.P.No.1 of 2016 was filed by the respondent husband, seeking restitution of conjugal rights. Both the cases were taken up together for trial and the learned trial Court passed a common order dated 13.02.2020, by which, I.D.O.P.No.32 of 2015 came to be dismissed and I.D.O.P.No.1 of 2016 came to be allowed. For the sake of convenience, the parties are arrayed herein as per the ranking in I.D.O.P.No.32 of 2015.

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

The marriage between the petitioner and the respondent was an arranged marriage, which was solemnized on 20.09.2002, at Srirangam Amala Ashram, according to Christian rites and customs. Out of the matrimony, they were blessed with a girl child, named Kiruba, who was born on 29.06.2003. The respondent husband was working as a qualified ITI Fitter in a private company at United Arab Emirates. At the time of filing the petition for divorce, the girl child was in 8th standard. The allegation raised by the petitioner wife is that she was subjected to sexual torture by the respondent husband and was also compelled to have unnatural sex with him and also compelled her to view porno films. Even while the husband was in abroad, whenever he contacted her through phone, suspecting the character of the wife, he used to inquire where



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she had been during the daytime. Not able to withstand the cruel treatment of the respondent husband, she consumed overdose of tablets in an attempt to commit suicide and was admitted in Chennai Medical College Hospital and Research Center at Irungaloor, at Trichy district on 07.04.2015, from where she was discharged after treatment on 13.04.2015. The respondent's family members instead of taking care of the petitioner wife, had always suspected the character of the petitioner wife, subjecting her to untold mental agony. Even after discharge from the hospital, she was not able to speak normally because of the fact that her vocal cord was affected. Under such circumstances, she had given a complaint before Samayapuram Police Station against the respondent husband and his family members, pursuant to the cruelty meted out to her. Following which, the petitioner wife and respondent husband had entered into a written agreement on 15.04.2015 before their relatives and mediators, in which the respondent husband had voluntarily accepted not to trouble the petitioner wife and his child anymore and to live separately. Only after that the petitioner wife has filed a Petition for divorce on the grounds of cruelty and the same has to be allowed.

4.The case of the respondent husband is as follows:-

4.1.The respondent husband has filed a counter refuting all the



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allegations set out in the Petition for divorce filed by the wife. It is a categorical submission of the respondent husband that his intention is only to inquire about the well-being of his wife and girl and inquiring about the details in a normal way cannot be accounted to cruelty. He had also submitted that he had dedicated almost the entire earnings of him for the welfare of his family and child and having enjoyed the fruits of his hard work, after the period of 13 years, the petitioner's wife had laid the petition for divorce. The only botheration of the respondent husband is as to the friendship, which she had developed in recent times with one Shanti, that too, who is leading an extravagant lifestyle. The petitioner wife, without heeding to the advice of her husband, had continued steady friendship with the said woman and the respondent husband had to intervene, only taking into mind the welfare of his girl child, who is living with his wife.

4.2.Having ignored all the bonafide advice rendered by the respondent husband, for the reasons known to her, the petitioner has foisted several allegations against him exclusively for the purpose of filing a Petition for divorce and her admission in a hospital on the guise of having attempted to commit suicide is a pre planned drama, for the purpose of creating a ground for filing a petition for divorce. The said attempt of the petitioner wife had



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shattered the respondent husband's faith on her and keeping in mind the future welfare of the family and that of his daughter, he can never ever imagine a divorce rather insist on his rights for restitution of conjugal rights with his wife and pressed for dismissal of the Petition for divorce.

5.Four witnesses were examined and marked 10 documents Ex.P1 to Ex.P10 were marked, on the side of the petitioner wife. Four witnesses were examined and 10 documents Ex.D1 to Ex.D10 were marked on the side of the respondent husband. One Court Document Ex.C1 was also marked. On the basis of arguments made by either parties, the evidence deposed and documents marked, the learned Tribunal proceeded to dismiss the petition for divorce filed by the petitioner wife and allowed the petition for restitution of conjugal rights filed by the respondent husband. Challenging the same, this Civil Miscellaneous Appeals are filed.

6.The learned counsel appearing for the appellant submitted that the petitioner wife and the respondent husband are separated for the past more than nine years and the relationship between the husband and wife has reached to a point that there is no possibility for a reconciliation. Pointing out that the agreement to separate came to be executed between the petitioner wife and the



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respondent husband on 15.04.2015, in the presence of both the family elders

and the mediators and the same has been marked as Ex.P5, the learned counsel insisted that having agreed before the mediators to lead a separate life, the respondent husband has no *local standi* to insist for restitution of conjugal rights with the petitioner wife. That apart, the petitioner wife has been subjected to unimaginable sexual torture by the respondent husband by conversing in such a way that all the conversations over phone, while he was in abroad and in person while he visited India, had subjected the petitioner wife to grave emotional abuse which she was not able to withstand and which even forced her to attempt to suicide by consuming over dosage of tablets. For which, she was duly admitted in the hospital and thereafter discharged after treatment. The respondent husband was also not attached with his daughter but only to the property, which stands in the name of the petitioner wife. The marriage has reached a point of no returns and hence, the same has to be necessarily dissolved and pressed for allowing the appeal.

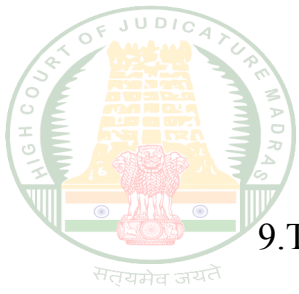
7.The learned counsel appearing for the respondent categorically submitted that the entire drama of attempting to commit suicide has been conceived by the petitioner wife only with the *malafide* intention to create a ground for laying a Petition for divorce. That apart, he emotionally submitted



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that the respondent husband has drained his entire earnings, what he had earned all through his life as a Fitter in United Arab Emirates and had transferred the money to his wife and had even purchased two immovable properties in the name of the petitioner wife because of his love and affection towards her and for the welfare of the family. Having enjoyed his entire earnings and immovable properties all through these years, after a span of nearly 13 years, irked by the genuine advice rendered by the respondent husband to avoid a pernicious friendship with one woman, named Shanti, of questionable character, the petitioner wife has gone to the extent of concocting false stories, imaginary allegations and giving false complaints to the police station exclusively for the purpose of filing a petition for divorce. The respondent husband is 57 years as on date and the petitioner wife is 52 years and a girl child has attained the age of 22 years and in few more years, she has to be married properly. Under such circumstances, it is unimaginable for the respondent husband to separate from his wife and at least for the well-being of the daughter, the Appeal has to be dismissed.

8. Heard the learned counsel for the appellant, the learned counsel for the respondent and carefully perused the materials available on record.



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9.The learned trial Court has frame five issues and had proceeded with the adjudication of the petition for divorce and petition for restitution of conjugal rights filed by the wife and husband respectively. The petition for divorce has been laid on the grounds of cruelty. On the basis of the evidence deposed and the records marked before the learned trial Court, the learned trial Court has come to a conclusion that the petitioner wife has miserably failed to prove the factum of cruelty either physical or mental, which would warrant in allowing the petition for divorce and on that basis, the learned trial Court had dismissed the petition for divorce and allowed the petition for the restitution of conjugal rights. From the date of marriage on 20.09.2002, till the date of separation on 15.04.2015, that is, the date on which the respondent husband had entered into an agreement of separation in the presence of elders, mediators and friends, there had not been an iota of evidence, which was brought before this Court by the petitioner wife that her respondent husband had inflicted cruelty. The marriage was consummated and the couple was blessed with a girl child and at the time of laying the petition for divorce, the girl child was in 8th standard. Presumably now, the girl child ought have been 13/14 years, by that time.

10.The specific allegation made by the petitioner wife is that the



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respondent husband indulged in sexual conversations with her over phone and whenever he visited India, he compelled her to adopt the methods of sexual acts displayed by him to her by porno films. The petition for divorce was filed by the petitioner wife in the month of September 2015. After that, the respondent husband has issued a legal notice to the petitioner wife, seeking restitution of conjugal rights on 26.10.2015, for which the respondent petitioner wife had caused the reply on 23.11.2015, which was marked as Ex.P7 and Ex.P9 respectively.

11.In the said Ex.P7, the respondent husband has pleaded that while the respondent husband was working in Abu Dhabi on 06.07.2009 and on 08.02.2013, two immovable properties were purchased in the name of the petitioner wife in Trichy District, with the money of the respondent husband. It has also been pleaded that atleast Rs.10,00,000/- has already been transferred by the respondent husband to the account of the petitioner wife. Though the petitioner wife had been earning Rs.15,000/- per month as a Nurse in SRM Hospital, Trichy, the respondent husband had never questioned as to how she manages the money his wife earns so far and they had been living together without any problem till the petitioner wife had developed a friendship with one Shanti, from Pudur Uthamanur. On 26.10.2014, in the presence of the



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respondent's uncle one Agasthin and brother Arul Anandhan, the petitioner wife had agreed to sever her friendship with Shanti and even after that on 24.03.2015, when the respondent husband's mother passed away, the petitioner wife had attended the final rites of the respondent husband's mother with her friend Shanti in a very indecent manner, creating a lot of inconvenience and shame to the respondent husband and his family. While the respondent husband was about to leave India for his work on 11.04.2015, the respondent had insisted compelling the petitioner wife not to continue her relationship with said Shanti and only for the said purpose, she had created a situation, as if she had consumed overdose of tablets on 07.04.2015, in an attempt to commit suicide and got admitted in the same hospital where she had been working. On 10.04.2015, she had also lodged a complaint against the respondent husband before Samayapuram police station, despite knowing the fact that the respondent husband had already availed air ticket to travel back to Abu Dhabi on 11.04.2015. In such serious circumstances, the respondent was compelled to cancel the travel and he attended the enquiry before the Samayapuram Police station and only on the harassment meted out by him in the police station, he was compelled to sign in an agreement for separation in the presence of mediators without his full consent and he had sought for restitution of conjugal rights, for which, Ex.P9, the petitioner wife has caused her reply.



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12.As rightly pointed out by the learned trial Court, I am of the considered view that the petitioner's wife had failed to prove even a single incident of cruelty meted out to her by her husband before 2015. Even as to the allegations of having indulged in sexual conversations by the respondent husband, she has not pointed out to the Court, the nature of the conversations made by him to her while deposing evidence. The only specific point which she was able to mention is that he used to hook her with questions as to where she is and what she had been doing at the time of receiving calls. The plight of men who are employed abroad leaving their family away at their hometown, has to be sensibly approached by the Courts of law, while dealing with the petition for divorce/restitution. Having separated from their family, a man working abroad, will be naturally suffering from untold fears as to the safety and security of their family in India and I do not find any demerit on the part of the respondent husband for having raised questions as to how she is and where she is and with whom she is, while he normally called her.

13.However, as to the allegations of picking up sexual conversations with the wife, the degree of the sexual conversation cannot be looked upon by this Court or by the learned trial Court, since the nature of the conversation



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made by the respondent husband was not clearly brought out by the petitioner wife either in the pleadings or in her evidence, both in examination in chief and cross examination. Intimate conversation between husband and wife cannot be taken as sexual conversation of grave nature until and unless the perversiveness of the same is not duly brought before the learned trial Court.

14.As far as the allegation of having indulged in unnatural sexual activity with the wife, the respondent husband had properly caused a legal notice, calling upon his wife for restitution of his conjugal rights on 26.10.2015, which was marked as Ex.P7, in which he had clearly stated that she was compelled to create a situation, as if she attempted to commit suicide only on his particular activity of warning her not to indulge or not to continue with her friendship with one female, namely, Shanthi, because of certain bad antecedents, which is gossiped around his village about the said female and not his wife. Fearing that his wife will have to suffer such a bad name in future, if she continued her friendship with Shanthi, he had made that warning and only a result of which, she had gone to the extent of attempting to create a situation, as if she attempted to commit suicide, got admitted and thereafter lodging complaint at the police station, she had gone went to the extent of compelling him to execute an agreement for separation on 15.04.2015, which is marked as Ex.P5.

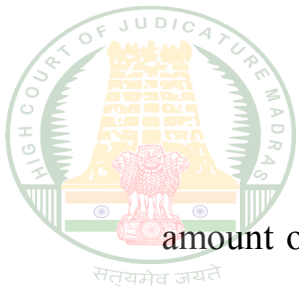


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15.Had the allegation of the wife that the respondent husband was a man, who indulged in unnatural sexual relationship, which had caused her serious physical and mental agonies been true, she would have brought it to the notice of her family even before 2015 when he had visited for 1½ months in a year for all those years from 2002 to 2015. It can be understood from the evidence brought out by both the parties that whenever the respondent husband left abroad for work, he had accommodated her in her maternal home and only when he comes back to India, he had called her duly to their matrimonial home for a pleasant stay, while he was in India. All the allegations has crept into their life as pointed out by the respondent in his pleadings and as well as in his evidence that the indifferences had arisen because of her friendship with a woman with bad antecedents and bad name in and around the village. The said allegation raised by the respondent husband has not been duly denied by the petitioner wife either in her pleadings or in her evidence.

16.That apart, this Court has also taken keen note of the fact that the respondent husband had duly sent at least Rs.10,00,000/- money for the maintenance of his wife and daughter all through these years. Though the learned counsel for the petitioner wife contended that would come a meagre



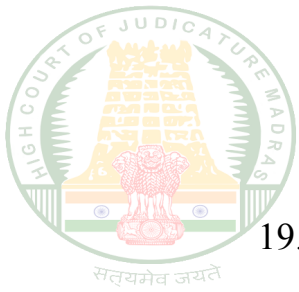
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amount of Rs.5,952/-, which would not even be sufficient for the maintenance of the wife and daughter. Taken into account the fact that two immovable properties has also been purchased in the name of the wife, which could not have been purchased without the contribution of the husband and taking into consideration, the welfare of the girl child, who is in a marriageable age, I am not inclined to interfere with the judgment passed by the learned trial Court.

17.In the instant case, our main endeavour would be to define broad parameters of the concept of “mental cruelty”. Thereafter, this Court would strive to determine whether the instances of mental cruelty enumerated in this case by the appellant would cumulatively be adequate to grant a decree of divorce on the ground of mental cruelty according to the settled legal position as crystallized by a number of cases of this Court and other Courts.

18.The term “mental cruelty” is defined in Black's Law Dictionary (8th edition, 2004) as follows:-

“Mental cruelty - as a ground for divorce, one's spouse course of conduct (not involving actual violence) that creates such anguish that it endangers the life, physical health, or mental health of the other spouse.”



19.The concept of cruelty has been summarized in Halsbury's Laws of

England (Volume 13, 4th edition Para 1269) as follows:-

“The general rule in all cases of cruelty is that the entire matrimonial relationship must be considered, and that Rule is of special value when the cruelty consists not of violent acts but of injurious reproaches, complaints. accusations or taunts. In cases where no violence is awarded, it is undesirable to consider judicial pronouncements with a view to creating certain categories of acts or conduct as having or lacking the nature or quality, which renders them capable or incapable in all circumstances of amounting to cruelty: for it is the effect of the conduct rather than its nature, which is of paramount importance in assessing a complaint of cruelty. Whether one spouse has been guilty of cruelty to the other is essentially a question of fact and previously decided cases have little, if any, value. The Court should bear in mind the physical and mental condition of the parties as well as their social status, and should consider the impact of the personality and conduct of one spouse in the mind of the other, weighing all incidents and quarrels between the spouses from that point of view: further, the conduct alleged must be examined in the light of the complainants capacity for endurance and the extent to which that capacity is known to the other spouse. Malevolent intention is not essential to cruelty, but it is an important element where it exists.”

20.In 24 American jurisprudence, second edition, the term “mental



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cruelty” is defined as follows:-

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“Mental cruelty as a cause of unprovoked conduct towards towards one's spouse, which causes embarrassment, humiliation, and anguish so as to render the spouse's life miserable and unendurable. The plaintiff must show a course of conduct on the part of the defendant which so endangers the physical or mental health of the plaintiff as to render continued cohabitation unsafe or improper, although the plaintiff need not establish actual instances of physical abuse.”

21.This Court finds that none of the allegation levelled by the wife against the husband amounts to mental cruelty. On the basis of the evidence deposed, documents marked and the arguments put forth by the parties, this Court finds that the finding rendered by the family Court is just and proper, which does not suffer from any illegality or irregularity.

22.In view of the above, the Civil Miscellaneous Appeals fails and the same are dismissed accordingly. There shall be no order as to costs.

12.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



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To

- 1.The Principal District Judge, Tiruchirappalli.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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