



C.M.A.(MD)No. 528 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 08.08.2025

Pronounced on : 25.09.2025

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

C.M.A.(MD)No. 528 of 2019

George Fernandez @ Micheal George Fernandez
... Appellant/ Petitioner

Vs.

Kavitha @ Arockiya Mariya Kavitha ...Respondent /Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 55 of Indian Divorce Act r/w. Section 19 of the Family Court Act, 1984, to set aside the fair and decretal order dated 05.04.2019 made in I.D.O.P.No.19 of 2018 on the file of the Family Court, Sivagangai and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.C.Jeyaprakash

For Respondent : Mr.R.Srinivasan



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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 05.04.2019 passed in I.D.O.P No.19 of 2018 on the file of the Family Court, Sivagangai.

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

a) The marriage between the petitioner and respondent was solemnised on 06.02.2012 at Adaikkala Annai Church, Puliyadithambam Village as per Christian rites and customs in the presence of elder members of both families as well as their relatives and friends.

b) At the time of marriage, 10 sovereigns of gold jewels were given to the respondent and 5 sovereigns and household articles worth about Rs 50,000/- were given to the petitioner and at present, all are in the custody of the respondent. 10 days after the marriage, the petitioner and respondent were living with the parents of the petitioner and thereafter, both of them lived in Bangalore on account of the job of the respondent. Before the marriage, the respondent was working as HR



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in a private concern in Bangalore. Through the wedlock, a female child was born on 10.11.2012.

c) While residing in Bangalore, the respondent had ill-treated the petitioner on various occasions and also teased him by comparing him with others which caused mental agony to the petitioner. Thereafter, they returned to the native village namely, Puliyadithambam Village and resided along with the parents of the petitioner for some time. During that time, she used to quarrel with the petitioner without any valid reason and she even refused to provide proper food to the petitioner and his parents and ill-treated the petitioner and his parents. Moreover, she had insisted for separate residence and the same was also intimated through the relatives and brothers of the respondent to the petitioner. Since the petitioner is the only son of his parents, he had not conceded to a separate residence.

d) On 10.04.2013, the petitioner advised the respondent to change her attitude, for which she quarrelled with the petitioner and also shouted at him. Further, she poured kerosene on her body and threatened the petitioner that she would commit suicide, which also caused mental harassment and cruelty to the petitioner.

e) The petitioner had taken various steps through his



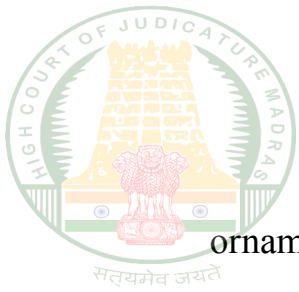
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relatives to change the attitude of the respondent, yet, there was no fruitful result. On 15.07.2013, the respondent, without any valid reasons, had wilfully and wantonly left the matrimonial home along with the child and deserted the petitioner. Several attempts were made by the petitioner for reunion through the relatives, but the respondent had not turned up. Finally, after the lapse of five years, the respondent had given a false police complaint against the petitioner and after an enquiry, they advised both parties to approach the competent Court of law. Immediately, on 21.05.2018, the respondent filed a maintenance case in M.C.No.28 of 2018 before the Family Court, Sivagangai claiming maintenance. However, she had not turned up to return to the matrimonial home and she had not chosen to file any petition for restitution of conjugal rights. Hence, the petitioner having left with no other option, filed the petition for divorce on the grounds of desertion and cruelty.

3. Brief averments contained in the counter filed by the respondent are as follows:

a) The marriage between the petitioner and respondent is admitted. The allegations levelled against the respondent are all false. At the time of marriage, the respondent's family gave 33 sovereigns of gold



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ornaments to the respondent and 7 sovereigns of gold ornaments to the petitioner and Rs 1,50,000/- amount of cash and household articles worth about Rs 1,00,000/- were given as sreedhana.

b) In fact, the petitioner seldom goes to any job and spends his time consuming liquor. The petitioner demanded a sum of Rs.4,00,000/- (Rupees Four lakhs only) from the respondent family for his business. The petitioner assaulted the respondent and drove the respondent out of the matrimonial house a year ago. The date of separation mentioned by the petitioner is not correct. The petitioner refused to maintain the respondent and the child. On 16.04.2018, the respondent complained to the police, but the petitioner refused to live with the respondent. Hence, the respondent is living at her parents' house. Hence, she prayed for dismissal of this petition.

4. On the side of the petitioner, P.W.1 to P.W.3 were examined and Ex.P1 and Ex.P4 were marked. On the side of the respondent, R.W.1 was examined and Ex.R1 to Ex.R4 were marked.

5. The trial Court, after considering the evidence and records, dismissed the petition. Aggrieved by the said order, the present



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Civil Miscellaneous Appeal has been filed by the

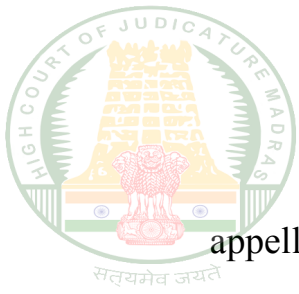
Appellant/Petitioner/husband on the following among other grounds :

a) That the trial Court gravely erred in concluding that the factum of cruelty was not proved on the part of the appellant. Even though the act of cruelty was specifically pleaded and proved by examining P.W.2 and P.W.3, regarding the act of cruelty, it is so acute and grave, and there is an apprehension of danger from the act of the respondent. Therefore, the finding of the trial Court is liable to be set aside.

b) That the trial Court had gravely erred in concluding that there was no complaint given by the appellant against the respondent for the act of threatening to commit suicide. The said finding of the trial court clearly shows the non-application of mind while arriving at a definite conclusion in matrimonial cases, which is perverse, and hence, it is liable to be set aside.

c) That the trial Court did not properly apply its mind to grant divorce to the petitioner and without considering the Hon'ble Supreme Court judgments, that if the wife insisted the husband to go for separate residence, it would amount to mental cruelty.

d) That the trial Court erred in rendering a finding regarding the act of threat committed by the brother of the respondent against the



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appellant, and the learned trial Court ought to have held that the act of threat committed by the brother of the respondent is proved.

e) That the trial Court had ventured to consider the point that admittedly both the appellant and the respondent have been residing separately since 15.07.2013, and the wife had not taken any steps for reunion by way of filing a petition for restitution of conjugal rights, which is a proper and legal remedy available to her. On the contrary, the respondent has preferred a false complaint before the local police station, which clearly shows the malicious attitude and intention on the part of the respondent in causing threat and mental agony to the appellant. In such circumstances, the trial Court ought to have granted the decree of divorce instead of dismissing the appellant's petition.

f) That the trial Court failed to consider the point that the appellant had made out a case for granting the relief of divorce.

g) That the judgment and decree of the trial Court are liable to be set aside, and hence, the learned counsel for the appellant prayed to allow the Civil Miscellaneous Appeal.

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



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7. In this case, the points for consideration are:

(1) Whether the order passed by the trial Court is proper or liable to be set aside?

8. Point No.1

The appellant/petitioner/husband filed the divorce petition under Section 10(1)(ix)(x) of the Indian Divorce Act, 1869 seeking divorce, on the ground of cruelty and desertion.

9. The marriage between the petitioner and respondent was admitted by both parties, and the child born through the said wedlock is also not in dispute.

10. According to the petitioner, the respondent who was employed at Bangalore at the time of marriage, compelled the petitioner to reside at her brother's house. The petitioner who was employed in a private concern was taking care of his family. However, the respondent was in the habit of leading a luxurious life and failed to contribute any money towards the maintenance of the family. She spent the money lavishly and frequently compared the petitioner with others, stating that the salary earned by him was not sufficient to meet her expectations and



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abused and harassed him.

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11. The respondent admitted that she was working in Bangalore, and she had gone there along with her husband. However, she denied that the petitioner was employed in Bangalore and was maintaining the family. She alleged that the petitioner was not engaged in any job, and that the family was being run solely by her. She further stated that the petitioner was in the habit of consuming alcohol and roaming out and that he had not maintained the family.

12. Though the petitioner claimed that he was employed in Bangalore, he has not produced any document to substantiate that he was working in any private company there. He was unable to specify the name of the company where he was allegedly employed. In his cross-examination, he admitted that he had not produced any salary proof. Therefore, the allegation that the respondent has spent money from the petitioner's salary lavishly and compared the petitioner with others by stating that his income was not sufficient to maintain the family is found to be false.

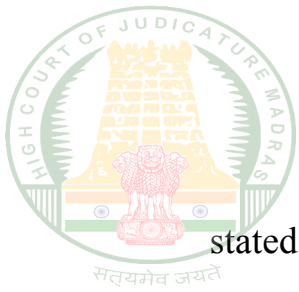


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13. The petitioner further alleges that, when they were residing at Puliadithambam village, the respondent did not attend to his needs and insisted that he should set up a separate residence. Upon his refusal, she quarrelled with him and threatened him with the support of one Pandi @ Arokiaraj, her brother Xavier and other relatives. It is further stated that Xavier called the petitioner over phone and threatened him. However, the petitioner has failed to mention the specific date on which such a threat was allegedly made. He has neither lodged any complaint nor issued any notice to the respondent in this regard. During cross-examination, he admitted that Xavier, brother of the respondent was working abroad and as such, he has not produced any phone details to substantiate the alleged threat.

14. Furthermore, to substantiate his case, he examined one Marimuthu as PW2 and his mother Smt.Lilly as PW3. PW2 in his chief examination stated that the respondent treated the petitioner disrespectfully and that the petitioner was threatened by one Pandi and Xavier, who is the brother of the respondent. He further stated that the respondent threatened to pour kerosene and commit suicide thereby implicating the petitioner and his family in a criminal case. Further, he

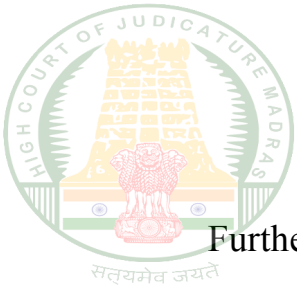


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stated that she left the matrimonial home five years ago. However, during cross-examination, he admitted that he was not aware of anything regarding their life at Bangalore and stated that he did not know when they returned to their village Puliadithambam. He failed to mention about the date on which a dispute arose between the petitioner and the respondent or the date on which the alleged persons threatened the petitioner. It is pertinent to note that he resides 4 kms. away from the petitioner's house and is not a member of the petitioner's family or a resident of the petitioner's village.

15. The petitioner further examined his mother Lilly as PW3, who reiterated the contention of the petitioner. During cross-examination, she admitted that the respondent's brother was residing in Ireland and that she was not aware of the residence of Pandi. She further admitted that she did not know about the petitioner's employment or income.

16. The evidence of PW2 and PW3, does not inspire the confidence of this Court as both have admitted that the brother of the respondent Xavier was not residing in India, but was residing in Ireland.

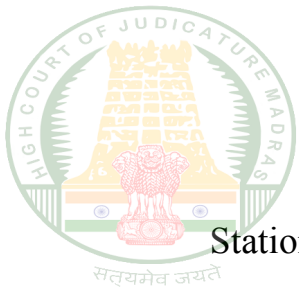


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Further, the petitioner has not produced the call detail records to establish that the said Xavier had contacted him over phone and threatened him.

17. Further another person, Pandi, who is alleged to have threatened the petitioner is none other than the uncle of the respondent. Neither the petitioner nor the witnesses has specified the date of such alleged threats. It was further contended that the respondent poured kerosene and attempted to commit suicide. However, the petitioner did not prefer a complaint nor issue a notice to the respondent in this regard.

18. On the other hand, the respondent stated that from the date of marriage, the petitioner was not employed anywhere and she was living on her income. Even after they came to reside in his village, he did not contribute any money towards family expenses. Instead, he insisted that she should bring a sum of Rs.4 lakhs as dowry from her parents. When she refused, he started harassing her and eventually, drove her out of the matrimonial home. The petitioner has also failed to prove his employment and income to substantiate his contention. The respondent, to substantiate her claim, produced a copy of the complaint dated 16.04.2018, addressed to the Inspector of Police, All Women Police

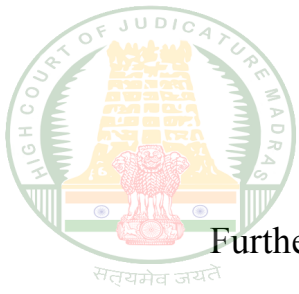


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Station, Sivagangai, wherein she stated that the petitioner demanded dowry, failed to maintain the respondent and her child and prayed to reunite the respondent with the petitioner. She produced Ex.R3 CSR issued by the Inspector of Police, All Women Police Station, Sivagangai. The respondent further stated that the petitioner was called for an enquiry and the police asked him to live with the respondent but he refused to do so. The petitioner's mother admitted in her cross-examination that at the Police Station, the petitioner declined to live with the respondent.

19. Though the petitioner stated that the respondent had left the matrimonial home five years earlier, he admitted that he filed the divorce petition only after the respondent had filed the maintenance petition. If it was true that the respondent had left the matrimonial home five years ago, the petitioner would have initiated divorce proceedings much earlier.

20. Moreover, though the petitioner has levelled several serious allegations against the respondent, he has failed to substantiate any of them with evidence. He has not proved that he was employed nor that he maintained the respondent and his child from his income.



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Further, he has not taken any steps to rejoin his wife nor made any attempt to meet the child or maintain the child. Ex.R4 is the order passed by the judge of the family Court in M.C.No.38 of 2018 directing the petitioner to pay a sum of Rs.10,000/- each to the respondent and their child as maintenance.

21. In light of the facts and evidence on record available, this Court is of the view that the petitioner had failed to prove that the respondent had treated him cruelly and deserted him and the trial Court has rightly dismissed the petition. We do not find any merit in the Civil Miscellaneous Appeal and hence, the same is liable to be dismissed.

22. In the result, the Civil Miscellaneous Appeal is dismissed. The fair and decretal order passed in IDOP No.19 of 2018, dated 05.04.2019, by the Family Court, Sivagangai is hereby confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

(A.D.J.C., J.) & (R.P., J.)
25.09.2025

Index : Yes / No
NCC : Yes / No
RM



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To
1. The Judge,
Family Court,
Sivagangai.

Copy to

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



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A.D.JAGADISH CHANDIRA, J.
AND
R.POORNIMA, J.

RM

Judgment in
C.M.A.(MD)No.528 of 2019

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