

**C.M.A(MD)No.379 of 2020**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

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**DATED : 28.01.2025**

**CORAM**

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

**C.M.A(MD)No.379 of 2020**

Mathivanan

... Appellant

Vs.

1.Jegatha

2.Sudharsan

... Respondents

**Prayer:** Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, to call for the records relating to the order and decreetal order dated 30.04.2019 passed by the District Judge, Family Court, Kanyakumari at Nagercoil in HMOP No.7 of 2018 and set aside the same.

For Petitioner : Mr.E.V.N.Siva

For Respondents : Mr.K.A.Ramakrishnan



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**ORDER**

WEB COPY Mathivanan, the appellant herein got married to the first respondent Jegatha on 02.09.2013 as per Hindu rites and customs. No child was born through the wedlock. The relationship between them had come under strain. The appellant filed HMOP No.24 of 2018 on the file of the II Additional Sub Court, Nagercoil seeking divorce on the ground of cruelty and adultery. The appellant herein had arrayed one Sudharshan as the alleged adulterer. The HMOP was transferred to Family Court, Kanyakumari at Nagercoil and renumbered as HMOP No.7 of 2018. The appellant examined himself as PW.1. One Govindarajan was examined as PW.2. Exs.P1 to P5 were marked. Jegatha examined herself as RW.1. After considering the evidence on record, the trial court dismissed the petition. Challenging the same, this civil miscellaneous appeal has been filed.

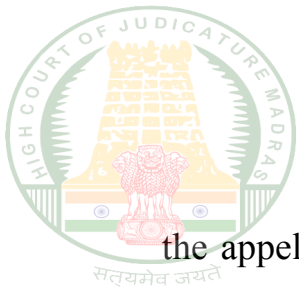
2.The learned counsel appearing for the appellant submitted that the parties have been residing separately for more than nine years. The relationship has irretrievably broken down. The long period of separation by itself should be deemed to constitute cruelty. He relied on the decision of the Hon'ble Supreme Court reported in **2023 SCC OnLine SC 497 (Rakesh Raman v. Kavita)**. He called upon this Court to follow the said decision and grant relief as prayed for.



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3.Per contra, the learned counsel for the wife submitted that she is willing to live with the appellant. He called upon this Court to sustain the impugned order and dismiss this appeal.

4.We carefully considered the rival contentions and went through the evidence on record. As already noted, the appellant herein pleaded two grounds ie., cruelty and adultery in support of his prayer for divorce. In support of the allegation of adultery, the appellant examined one Govindarajan, his friend, as PW.2. PW.2 in his chief examination had deposed that in March 2017, he accompanied the appellant to go to the parents' house of Jegatha in a car to bring her back. Jegatha was not in Keerivilai, her native village. Coming to know that she is with the second respondent at Vandikudiyiruppu, PW.2 and the appellant went there. The house was in locked condition. Since they heard sound coming from inside the house, the appellant and PW.2 claimed to have seen through the window on the southern side Jegatha and the second respondent in a compromising position. The appellant is said to have cried thereafter. PW.2 pacified him and taken him home. The appellant in his proof affidavit had also testified on the same lines. Both the appellant as well as PW.2 were cross examined. The court below noted that the specific date on which they saw the second respondent was not mentioned. The testimony of



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the appellant as well as PW.2 sounds so artificial and unconvincing. If really

the appellant had found his wife in such a condition with the adulterer, his normal reaction would be to raise an alarm. The natural conduct expected of him was to bang the door and challenge his wife and the adulterer to come out. He would have definitely raised a hue and cry and sought support of the residents of the locality. Definitely, he would not have returned crying. Section 114 of the Indian Evidence Act enables the court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct in relation to the facts of the particular case. It is not as if the appellant was alone when he had seen the alleged act committed by his wife with the second respondent. He was accompanied by his friend. Therefore, the version projected by the appellant and PW.2 is not consistent with normal human conduct. That is why, the court below disbelieved the same. Paragraphs 13 to 16 of the judgment of the court below read as under :

“13.Thus there must be clear proof of adultery. The mere fact that the petitioner considers the conduct of the 1st respondent-wife open to suspicion is not sufficient. The petitioner has to state the specific act of adultery and the occasion when and the place where such acts were committed together with the name and address of the person with whom such adultery was committed.



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The finding of adultery has necessarily to be based on some sort of positive evidence superior to suspicion. Paragraph 109 of Raydon on Divorce which is as follows:

*"The burden of proof is throughout on the person alleging adultery there being a presumption of innocence. Reference to the statute shows that the standard of proof is that the court must be satisfied on the evidence. The act makes no distinction between the stand proof of adultery and that of any other ground of divorce but this has not in the past been reflected in the cases, which have required in a criminal case before an accused person is found guilty, that is, that the tribunal must be satisfied beyond all reasonable doubt. But it has been held that a suit for divorce is a civil and not a criminal proceeding and that the analogies and precedents of criminal law have no authority in the Divorce Court which is a civil tribunal It is wrong, therefore, to apply an analogy of criminal law and to say that adultery must be proved with the same strictness as is required in a criminal case. As far as the standard of proof is concerned adultery like any other ground for divorce, may be proved by a preponderance of probability."*

Taking into consideration the rule extracted above, it has to be specifically pleaded since the charge of adultery is of very serious nature,

14. Our Hon'ble Madras High Court in the citation AIR 1967 Mad 254 Ammal V. Manickam Gounder and another held as follows:



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"Adultery, from its nature, is a secret act. Direct evidence of an act of adultery is extremely difficult. It is very indeed that the parties are surprised in the direct act of adultery. Direct evidence, even when processed, the court will tend to look upon it with disfavour, as it is highly improbable that any person can be a witness to such acts, as such acts are generally performed with utmost secrecy."

15. With the above said legal backgrounds, considering the facts on hand, found that the petitioner has not mentioned the specific date on which he along with one Govindarajan saw the intimate relationship of the respondents. Further the petitioner, however, did not examine any person of the locality from whom he had heard of the said alleged illicit intimation of the 1st respondent with 2nd respondent. The petitioner sought to sustain the said allegation on the basis of his testimony and relied upon the evidence of the Pw2, who is none other than close friend of the petitioner. On perusal of the oral testimony Pw1 it seems that the petitioner has made an effort to level allegations of alleged then relationship of the respondents by stating that the 1st respondent had an affair with the 2nd respondent, but apart from the allegation, no substantive, corroborative evidence has been brought regard

16. Further on perusal of the evidence of the Pw2 found that though he is close friend of the petitioner, he never attended the



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marriage of the petitioner and the 1st respondent. Apart from that the exact date on which he along with petitioner saw the illicit relationship of the respondents in the house belongs to the 2nd respondent. Though the petitioner and Pw2 saw the illicit relationship the respondents, they never raised alarm or trade an attempt assault the respondents, instead they silently watched the illicit relationship of the respondents shows that their version is suspicious.”

5.We are of the view that the court below had correctly approached the issue and that its finding on the ground of adultery does not call for interference.

6.The other ground pleaded by the husband was cruelty. It is seen that except his testimony, there is absolutely no corroborative evidence. The court below after a detailed consideration of the evidence on record, had correctly applied the principle of law and come to a finding that the ground of cruelty has not been made out. The issue can be approached from another perspective. We are more than convinced that an outrageous allegation of adultery had been levelled against the first respondent/wife. The alleged adulterer is none other than the brother in law of the first respondent. When



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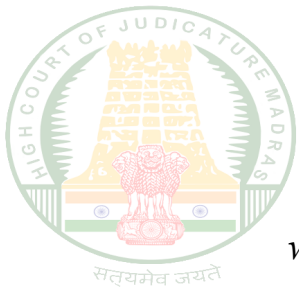
the allegation of cruelty is emanating from such a person against his wife, it

could not be taken at its face value. That is why, the court below rightly looked for corroboration. In this case, the appellant examined only himself in support of the ground of cruelty. PW.2 was examined only in support of the allegation of adultery. No other witness has been examined. The court below rightly disbelieved the case of the appellant in this regard also. In our view, interference with the finding in this regard is not warranted. In fact, the prime focus of the learned counsel for the appellant was that considering the long period of separation between the parties, this Court should presume that cruelty has been made out. The Hon'ble Supreme Court in the decision reported in **2023 SCC OnLine SC 497 (Shri Rakesh Raman Vs Kavita)** had held as follows:

“20. ...

*(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair.*

*21. ... We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two, has to be read as cruelty under Section 13(1) (ia) of the 1955 Act. We therefore hold that in a given case, such as the one at hand,*



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*where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other. We are also conscious of the fact that a dissolution of this marriage would affect only the two parties as there is no child out of the wedlock."*

The question that calls for consideration is whether the appellant is entitled to succeed on this ground. Section 23(1)(a) of the Hindu Marriage Act, 1955 states that the court must be satisfied that the party seeking the relief is not in any way taking advantage of his or her own wrong. The Hon'ble Supreme Court in its recent decision reported in **2024 LiveLaw (SC) 643 (Prabhavathi @Prabhamani v Lakshmeesha M.C.)**, cautioned the Courts against according any premium to a party's own misdemeanours and held that the bogey of irretrievable break down of marriage cannot be used to the advantage of a party who is solely responsible for tearing down the marital relationship. In the case on hand, the marriage between the parties took place on 02.09.2013. The marriage was consummated. Even according to the appellant, he dropped his wife in her parental house on 13.02.2016. The appellant would claim that his wife left the matrimonial home on her own accord. The appellant does not appear to have taken any step for reunion. He had not called upon his wife to



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come back. On the other hand, he levelled false allegations against his wife that she was in adulterous relationship with her brother in law. The falsity of the allegation is borne out by the fact that the appellant also alleged that Jegatha and the wife of the adulterer conspired together to do away the appellant. If really, Jegatha was in adulterous relationship with the second respondent, the husband of her own sister, certainly Jegatha's sister would not have joined her on any mission. This allegation has been found to be false by the Court below. We decline to grant relief in favour of such a person who has levelled false allegations. Otherwise, a person who is guilty of marital misconduct will be taking advantage of his own wrong. Such a situation is impermissible in law. In this view of the matter, the order impugned in this civil miscellaneous appeal is sustained and this civil miscellaneous appeal is dismissed.

**[G.R.S., J.] & [R.P., J.]**  
**28.01.2025**

NCC : Yes / No  
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Index : Yes / No  
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To

1. The District Judge, Family Court, Kanyakumari at Nagercoil



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**and**

**R.POORNIMA, J.**

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