



C.M.S.A.(MD)No.23 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.04.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.S.A.(MD)No.23 of 2023

and

C.M.P.(MD)No.16875 of 2023

Hemalatha

... Appellant

Vs.

S.Paranidharan

... Respondent

PRAYER : Civil Miscellaneous Appeals filed under Section 28 of the Hindu Marriage Act r/w. Section 100 of C.P.C., to set aside the fair and decreetal order made in H.M.C.M.A.No.1 of 2022 on the file of the learned Principal District Judge, Theni, dated 31.07.2023, reversing the fair and decreetal order made in H.M.O.P.No.6 of 2020 on the file of the Sub Court, Theni, dated 14.12.2021 and allow this Civil Miscellaneous Second Appeal.

For Appellant	: Mr.L.Rajiah
For Respondent	: No Appearance

JUDGMENT

Challenging the judgment and decree made in H.M.C.M.A.No.1 of 2022 on the file of the learned Principal District Judge, Theni, reversing the fair and



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decreetal order made in H.M.O.P.No.6 of 2020 on the file of the Sub Court,

Theni, dated 14.12.2021, this Civil Miscellaneous Second Appeal is filed.

2.For the sake of convenience, the parties are arrayed herein as per the ranking before the trial Court. The appellant herein is the respondent in the H.M.O.P. The respondent herein is the petitioner in H.M.O.P. The petitioner husband filed a petition for divorce on the ground of cruelty against his wife.

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

3.1.The marriage between the petitioner and the respondent was held on 11.03.2010, at Okkalikar Thirumanam Marriage Hall, at Cumbum, in accordance with Hindu rights and customs. At the very instance of marriage, the respondent had never been cordial with the petitioner and was not cooperating to take forward the matrimonial life peacefully. She indulged in disrespectful behaviour with the elders of the petitioner's family. While being so, on 16.10.2011, the couple were blessed with a male child, namely, Vishal. In the meanwhile, the respondent wife influenced by the wrong advises of her parents and out of her greed for money, she continuously pointed out that she is not happy with her husband and she is not inclined to continue her matrimonial life with her husband.



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3.2.It is also alleged by the petitioner husband that, the respondent has inappropriate relationship with one Velu and only for the purpose of hiding all those wrong, she continuously indulged in creating troubles in the matrimonial family and she went to the extent of lodging a complaint before the All Women Police Station, Theni, on 18.05.2020, on the premise that the petitioner husband and his parents had demanded dowry. However, the Inspector of All Women Police Station on inquiry, concluded that, the respondent had lodged the complaint on the ill-advice of her parents and closed the complaint, advising the respondent to carry forward the matrimony with calm and amenity.

3.3.Even during the subsistence of the matrimony on 06.06.2012, the respondent went to the house of the said Velu and stayed along with him and on his advice, she has lodged a complaint at Cumbum South Police Station as against the petitioner husband. It is also alleged that on 22.10.2012, the respondent wife has given a written undertaking that she will not go to the said Velu's house and stay, as she had done on 14.10.2012 and on the basis of the said undertaking, the petitioner husband had condoned her mistake and continued to live with her, as a result of which on 21.10.2013, another son, namely, Ashwin, was also born to the couple.



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3.4.The petitioner with the money which he had earned through his Army job, had also purchased a land in Cekkadi Street and had availed loan and constructed a house and conducted house warming for the said house on 12.03.2015. Despite his proper invitation to his parents-in-law, that is, the parents of the respondent wife, they failed to attend the said function. During May 2015, the petitioner had taken the respondent and children to his Army Quarters and lived there, wherein she had indulged in continuous quarrels creating great disharmony in the family and disruption to the petitioner in his working atmosphere. She also went to the extent of lodging complaints before his higher authorities in the Army Camp. She had totally refused to give matrimonial pleasure to the petitioner husband.

3.5.On 04.01.2016, the respondent's father, namely, Pichai Mani, along with one Army person, namely, Natarajan, son of Periyasamy, had together taken efforts to meet the higher authorities of the petitioner and complained about the petitioner, while they were residing in the Basic Training Regiment, Army Air Defence Centre, at Berhampur (Odisha), Ganjam District. As the result of which, disciplinary action was initiated as against him. In which, the petitioner submitted the letter dated 22.10.2012, in which the respondent wife



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agreed to live amicably with the petitioner and on that basis, she was advised to go along with her parents and reside in her native.

3.6.The respondent had also lodged several complaints in the women section, namely, Army Wife's Welfare Association, in the Army Headquarters, at Delhi, as against the petitioner. Following which, the respondent wife had filed a petition in H.M.O.P.No.61 of 2016 before the learned Subordinate Judge's Court, at Utamapalayam, seeking restitution of conjugal rights. She later withdrew the same on 03.11.2016. On 22.09.2016, the petitioner had lodged a complaint as against the respondent at Uthamapalayam Police Station, for which, a receipt bearing C.S.R.No.44 of 2016 was also issued on 02.10.2016. In the enquiry before the All Women Police Station, the respondent declared that she is not willing to live with the respondent husband and left the police station without cooperating with the enquiry.

3.7.While the respondent left the matrimonial home, she had taken away all her belongings with her. On 22.09.2016, the petitioner has caused a legal notice seeking to restitute her conjugal rights with him. Since the same was not responded, he has filed this petition for divorce.



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

4.1.Denying each and every allegations raised by the petitioner in his petition for divorce, the respondent wife has filed a counter before the learned Special Judge, Theni. It is claimed by the respondent wife that she was adorned with 30 sovereign of gold jewels and gifted with silver articles and other home appliances worth Rs.4,00,000/- by their parents. Despite the respondents keen cooperation to take forward her matrimonial life peacefully with her husband and her in-laws, the petitioner was not leading happy matrimonial life with the respondent.

4.2.All the allegations of illicit relationship with one Velu are false. It is only the petitioner and his parents who indulged in domestic violence as against the respondent wife. Despite gifting her with home appliances worth Rs. 4,00,000/-, the petitioner demanded Rs.17,500/- for purchasing water purifier, which was also duly given by her parents in the presence of her maternal uncle, one Ramaiah, to the petitioner.

4.3.Within four days of marriage, the petitioner called the respondent's parents, informing that he has decided to divorce the respondent demanding a



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motorcycle. When the respondent and her parents expressed their inability to do the same, the petitioner subjected the respondent to physical abuse and chucked her out of the matrimonial home. However, the respondent managed to stay in her matrimonial home even after such incident. He also tortured the respondent, demanding washing machine, fridge and others home appliances, including a motorbike.

4.4.The petitioner went to the extent of removing Thali chain from the respondents neck forcibly. All these behaviour of the petitioner had created great fear in the mind of the respondent and she continued to live with the petitioner like a dog in her matrimonial home. They went to the extent of physically abusing the respondent for lame reasons continuously for the entire day, compelling her to leave the matrimony home and pressed for dismissal of the petition for divorce.

5.The learned Trial Court examined one witness and marked Ex.P1 to Ex.P13 on the side of the petitioner and examined two witnesses and Ex.R1 to Ex.R6 were marked. On the basis of evidence deposed and document marked, the learned Trial Court pointed out, though the petitioner in his petition for divorce and in his evidence claimed that on 06.06.2012, the respondent has



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stayed in the house of Velu in the guise of inviting him for the birthday celebration on 14.10.2012 without the knowledge of the petitioner and had marked Ex.P6, claiming that the respondent had given an undertaking in writing that she will not indulge in any wrong doing along with the said Velu. On the basis of which, the learned trial Court had recorded that the respondent was sent out of her matrimonial home after physical abuse by the petitioner and only under such circumstances, having given information to her father, left with no other option, she was compelled to stay in the House of an unknown person, namely, Velu, and she had no illicit relationship with the said Velu.

6.The learned Trial Court made it a point that, had there been any illegal relationship with Velu, the petitioner would have impleaded the said Velu as a party in the petition for divorce and further, the learned Trial Court observed that the petitioner had not mentioned any such allegation in H.M.O.P.No.61 of 2016 filed by him before the learned Subordinate Judge Court, Utamapalayam, seeking restitution of conjugal rights. Had it been true that the respondent had any illicit relationship, he would have diligently pleaded the same in even in H.M.O.P.No.61 of 2016. It was also noted by the learned Trial Court that even in the petition given by the petitioner husband on 06.06.2012 before the Police Station, such an allegation was not raised by the petitioner and on that basis,



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came to a conclusion that all the allegations of illicit relationship between the respondent wife and the aforesaid Velu was not genuine.

7.As far as Ex.P6 is concerned, the learned Trial Court has diligently recorded that, the said undertaking has nothing to do with any relationship, which she had with Velu, but the same is a narrative as to her decision to lodge a complaint against the petitioner on the advice of the said Velu, as a consequence to the physical abuse suffered by her in the hands of the husband. The said undertaking would reveal that she will not continue to lodge any complaint as against the petitioner and nothing is stated as to her relationship with Velu. That apart, the learned Trial Court also pointed out that the petitioner himself agreed that he had not mentioned any such allegation that the respondent had any illegal relationship with Velu in his petition for restitution of conjugal rights in H.M.O.P.No.61 of 2016 and on that basis, proceeded to dismiss the petition for divorce.

8.However, relying upon Ex.P6, the learned first appellate Court had extracted the contents of the same as follows:-

“My husband was unhappy about my conduct of staying at Velu's house during the night hours on 06.06.2012. It is only on the advice of the said Velu, I lodged a complaint against my husband

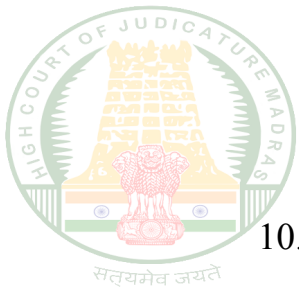


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before the All Women Police Station. Further, on 14.10.2012, without my husband's knowledge, I visited Velu for the purpose of inviting him to the birthday function. My husband is unhappy about the fact that I stayed in Velu's house and that I acted upon his instruction. I will not indulge in any such wrong activities any further and I ensure the same before my husband and he chose to condone and request my husband and the elders to condone my mistake. I ensured that I will not further have any conversations with the families of Velu and Kumaran.”

9.The learned first appellate Court further pointed out that, only on the basis of the said undertaking dated 22.10.2012, the respondent wife was further allowed to rejoin with her husband and family. Relying upon the evidence of the respondent wife, whether he admitted at the time of cross examination that whether she admitted her sign in Ex.P6 at the time of cross examination and the same was written by her in her own handwriting. The learned first appellate Court drew adverse inference against the respondent wife and it is only because of the activities and behaviour of the respondent, indifference crept in between the petitioner and the respondent in the matrimonial life and the respondent had continuously failed to diligently take forward matrimonial by fulfilling her matrimonial duties towards her husband.



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10.Further pointing out that on 06.09.2016, the petitioner had executed a gift deed in favour of his wife and his children with respect to a house property by marking the same as Ex.P12. Relying upon the admission made by the respondent wife as to the execution of the same in the cross examination, the learned first appellate Court concluded that the learned trial Court had proceeded to dismiss the petition for divorce without considering the factum of the respondent wife's, continuously efforts to rejoin with her husband.

11.Further pointed out that, the respondent wife has not taken diligent steps to prove any of the domestic violence in the hands of the petitioner and his parents with the proper evidence by examining proper evidence and marking proper documents. Pointing out the fact that, the petitioner has duly pleaded in petition for divorce, despite his diligent efforts to bring back his wife to his matrimonial home, on 22.09.2016, it was only the respondent who refused to rejoin the husband by categorically declaring the same before the enquiry at the All Women Police Station, Uthamapalayam, and further recording the fact that the respondent father, namely Pitchaimani, fairly conceded that the petitioner and his wife has been separated for more than seven months, the learned first appellate Court concluded that such conduct of the respondent could be considered as the case of cruelty suffered by the



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petitioner and allowed the petition for divorce. Challenging the same, the respondent wife is before this Court.

12.Despite notice served on the petitioner husband and effecting a paper publication on substituted service of summons initiated by this Court, he has not turned up before this Court either in person or through an advocate.

13.Heard the learned counsel for the appellant and carefully perused the materials available on record.

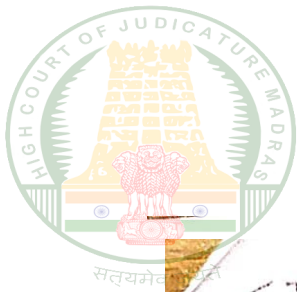
14.A careful perusal of the materials available on record would reveal that, all the allegations of inappropriate relationship between the respondent wife and one Velu have been condoned by the petitioner husband at the first instance and thereafter, both the petitioner and the respondent lived together happily, resulting in the birth of their second son. Though this Court is of the considered view that Ex.P-6 will not reveal any kind of illegal relationship between the respondent and the said Velu and even the first appellate Court has pointed out that in the said undertaking, she has made it clear that she will not follow the ill-advises of the family of Velu and one Kumaran, I am of the considered view that the said Ex.P6 cannot be a document by which the learned



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first appellate Court would conclude that there had been a inappropriate relationship between the said Velu and the respondent wife. That apart, even if there had been any inappropriate relationship, the said conduct had been condoned by the petitioner husband and the same cannot be raised again in a later point of time, for the cause of availing divorce.

15.It is shocking to understand that the first appellate Court has fully negated Ex.R1, Ex.R2 and Ex.R3 marked on the side of the respondent before the learned trial Court. Ex.R1 executed by the petitioner husband and the respondent wife before the Notary Public, at Berhampur, Ganjam Odessa, for the purpose of submitting the same before the departmental inquiry conducted by the higher authorities of the petitioner husband on the initiation of the respondent wife with respect to the domestic abuse suffered by her in the hands of her husband, while staying in the Army quarters along with her husband and two children, which was extracted as follows:-



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5. I understand that both me and my wife need to respect each others individuality and move ahead in life with a better understanding in order to lead a happy & peaceful married life with our two children.

6. I will provide my wife with a mob phone to allow her make communication with her parents.

7. I will open a Recurring Deposit (RD) account on my wife's name immediately on her joining me at my duty station.

8. I assure and promise that I will make up for the 25 tola Gold which I had mortgaged to construct my house, that now I am registering on joint name i.e on mine and my wife's name, within four years from now.

9. I will also give space to her to make friends with other ladies in neighbourhood and follow a career in teaching.

10. I will also destroy the original affidavit in which I had blamed my wife regarding illicit relation with one Mr Velu.

11. I confirm that both me and my wife/husband have come to a mutual understanding on 13 Aug 2016 and now have decided to live together for the betterment of our children and ourselves too.

12. That I am swearing this affidavit in order to produce before the authority for official.

That the facts stated above are true to be the best of my knowledge & belief.

BY ORDER

Advocate

Signatures of Deponent

SHERISTADAR
SUB COURT
M. THENI

Witnesses

1. P. Hemalatha (P. Hemalatha)
2. P. Kilaraya (P. Kilaraya)
3. N. Madhavan (N. Madhavan)

4.

5. P. N. Venkatesh (P. N. Venkatesh)

K.M. Panigrahi
Notary, Berhampur (G)
Read No 11/2004

DECLARATION

The deponent having been located by Advocate Sri. R.K. Sahasr
Jalampy, dated 13/8/2016, the deponent who came to the court
the contents and

Notary, Berhampur
Read No-31/2016



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16.A careful reading of the said affidavit itself would reveal that the petitioner was subjected to a Departmental Inquiry at the instance of his wife, after subjecting her to serious domestic violence, in which he had given a keen undertaking that he will not further indulge in any domestic abuse as against his wife and that he will register his home property jointly in favor of his wife and children. It is only at the instance of the departmental enquiry, Ex.P12 gift deed has been executed on 06.09.2016 by the petitioner husband.

17.It is pertinent to mention here that the affidavit deposed by the affidavit was executed by the petitioner husband before the Notary for the purpose of submitting the same before the departmental authorities on 13.08.2016. Only as a consequence to the disciplinary authorities, Ex.P-12 gift deed has been executed in favour of his minor children that too nominating himself and the respondent as guardian.

18.Ex.R2 is the information received by the respondent wife under the Right to Information Act from the Family Court, Theni, with respect to documents marked before the said Court in H.M.O.P.No.61 of 2016. The same would reveal that the same is with respect to the statement given by the



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petitioner husband admitting that he had utilized 30 sovereign of gold jewelry for the purpose of constructing his house and that he had even mortgage the same and allowed the mortgage to lapse into default, and has neither redeemed nor returned the jewelry to the respondent wife. The statement of the respondent wife would reveal that she had lodged a complaint before him only subsequent to the extreme domestic violations suffered by her in the Army quarters. As a result of which, the Army authorities have duly taken proper action as against the petitioner husband.

19.Following which, the petitioner had executed Ex.P12 gift deed. Having not considered the same, in a hurry, the first appellate Court has rushed to over turn the judgment of the learned trial Court and had given more thrust to the undertaking marked as Ex.P6 painting bad on the character of the respondent wife, when the petitioner himself had diligently failed to implead the said Velu as a respondent in his petition for divorce.

20.Accordingly, I find it necessary to interfere with the judgment passed by the learned Principal District Judge, Theni, dated 31.07.2023 and the judgment made in H.M.O.P.No.6 of 2020 on the file of the Sub Court, Theni, dated 14.12.2021 is confirmed. In view of the above, this Civil Miscellaneous



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Second Appeal is allowed. There shall be no order as to costs. Consequently,

connected miscellaneous petition is closed.

08.04.2025

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

To

- 1.The Principal District Judge, Theni.
- 2.The Sub Judge, Theni.
- 3.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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