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CMA No. 706 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-04-2026

CORAM

**THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

CMA No. 706 of 2023

R.Pandi @ Muthupandi

Appellant

Vs

M.Saranya

Respondent

PRAYER This Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act, 1984, praying to set aside the judgment and decree dated 31.10.2022 passed in H.M.O.P.No.226/2021 by the Learned Family Court Judge, Tiruppur.

For Appellant: Mr.K.Ravi Anantha Padmanaban
for Mr.B.Thirumalai

For Respondent: Mr.T.Balaji Thirumoorthy

ORDER

(Order of the Court was made by C.V.Karthikeyan J.)

The petitioner in H.M.O.P. No.226 of 2021 has filed the present appeal aggrieved by the Judgment dated 31.10.2022 passed by the file of the Family Court, Tiruppur, by which Judgment, the said petition which had been presented under Section 13(1) (i-a) & 13 (1) (i-b) of the Hindu Marriage Act, 1955, had been dismissed.



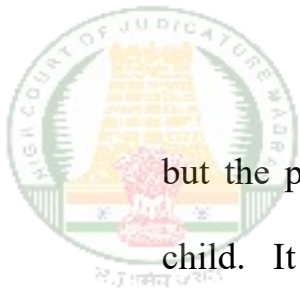
2. In the petition filed in H.M.O.P No.226 of 2021, it had been contended that the marriage between the petitioner and the respondent was solemnized on 30.01.2012. They were also related to each other. It was further stated that at the time of marriage, 18 sovereigns of jewels had been given. It was further contended that the petitioner / appellant herein had gone to Singapore after seven months. It was further stated that he was thereafter sending money to his mother. The fact that he was sending money to his mother, was also known to the respondent. It was further contended that however aggrieved that the amounts were not sent to her, but rather to the mother of the petitioner, the respondent left the matrimonial house and resided in her parental home for a period of one month. It was further stated that thereafter the petitioner / appellant came back to this country. It was stated that at the time of marriage the respondent had studied only +2. It was further stated that he also got a passport for the respondent. However the respondent conceived and therefore she was not in a position to take a flight to go to Singapore. It was stated that on 06.01.2015, a girl child was born to them. It was stated that after the birth of the child, he tried to contact her through phone. However there was no proper response.

3. It was further contended that the baby shower function was conducted in which neither the petitioner nor his parents were invited. It was stated that the



respondent demanded return of the 18 sovereigns of gold given at the time of marriage. It was further stated that a complaint was also lodged on 13.03.2018 at Uthamapalayam Police Station. It was further contended that owing to all these aspects, the respondent had committed acts of mental cruelty and by going away to her mother's house, she had also deserted the petitioner / appellant. It was under those circumstances, the petition had been filed seeking dissolution of marriage.

4. A counter affidavit had been filed on behalf of the respondent herein wherein, the allegations raised against her, had been denied and disputed. It had been stated that the respondent wanted to join the child to school and sought payment of some money as maintenance. It was further contended that on 13.03.2018, she lodged a complaint before the Uthamapalayam Police Station, seeking return of her certificates. It was further contended that after the marriage till April 2012, all the parties were living as joint family. It was stated that after the petitioner had gone to Singapore, the respondent resided at Madurai along with her in-laws. In May 2014, pregnancy was confirmed. It was stated that later, on 06.01.2015, a child was also born. It was further stated that neither the petitioner nor his parents take care of either her or of the child necessitating filing of M.C.No.6 of 2020 seeking maintenance. It was very specifically stated that information had been given about the birth of the child,



but the petitioner did not take care of either the respondent or look after the child. It was stated that the respondent is taking care of the child with much difficulty. It had been stated that the petition seeking divorce should be dismissed and on the other hand, she must be given some maintenance amount.

5. On the basis of the above pleadings, the trial Court framed necessary issues and invited the parties to tender evidence. Accordingly, the petitioner examined himself as P.W.1 and examined another witness as P.W.2. He also marked Ex.P1 to Ex.P12. The notice issued to the respondent was marked as Ex.P2 and the returned cover was marked as Ex.P3. The subsequent notice was marked as Ex.P4 and the Acknowledgment Card was marked as Ex.P5; the reply was marked as Ex.P6; the copy of the petition in M.C.No.6 of 2020 was marked as Ex.P9.

6. On the side of the respondent, the respondent examined herself as R.W.1 and marked one document as Ex.R1 which was the birth certificate of the child.

7. The learned trial Judge on the basis of the oral and documentary evidence and on the basis of the pleadings, had very specifically found that there was justification for the respondent to go over to her mother's house after



the birth of the child. It was also held that the petitioner continued to send money only to his mother from Singapore. It was held that protestations against this was justified as this indicated that the petitioner did not recognise the status of the respondent as his wife. It was also stated that a Police complaint was given only to ensure that they live together and for no other purpose. It was finally held that the ground of deliberate desertion had not been made out and the ground of cruelty had also not been established. Holding as above, the petition was dismissed.

8. Questioning the said dismissal, the petitioner herein has filed the present appeal.

9. Heard arguments.

10. It is the contention of the learned Senior Counsel for the appellant that the appellant had studied upto 8th standard while the respondent was a graduate. It was stated that he was working as a construction worker in Singapore, but was relieved from the job on 09.01.2020 and was not in continuous employment. It was also pointed out that the appellant had various problems with his legs. It was also pointed out that the respondent did not file any application seeking restitution of conjugal rights. It was further argued that



when the baby shower function and later tonsure and ear piercing ceremony of the baby were performed, neither the appellant nor his parents were invited.

They were also not permitted to see the child.

11. It was further argued that for over seven years, the respondent had deserted the matrimonial house and they are living separately for the past 10 years. It was stated that there was deep-rooted animosity between the parties. It was therefore contended that the Judgment refusing to grant divorce, should be revisited by this Court and set aside and the marriage should be dissolved.

12. The learned counsel for the respondent however argued that there was no evidence to show that the baby shower was ever conducted. It was stated that information relating to the birth, was given to the appellant herein, but he and his family members did not respond properly. It was further contended that the appellant herein used to send money only to his mother and did not recognise the status of the respondent as his wife. The learned counsel contended that the respondent necessarily had to file an application seeking maintenance as financial support was not extended by the appellant herein. The learned counsel stated that even till this date, the child is only under the care and custody of the respondent who is taking care with much difficulty.



13. The learned counsel for the respondent contended that no ground had been made out for grant of dissolution of marriage either on the ground of cruelty or on the ground of desertion and stated that the trial Court had correctly appreciated the evidence and had dismissed the petition. Therefore, the learned counsel contended that the appeal should be dismissed.

14. We have carefully considered the submissions and perused the materials on record.

15. The marriage between the appellant / husband and the respondent / wife was solemnised on 30.01.2012. After seven months of marriage, the appellant had left for Singapore. It was contended that he was working as a construction worker there. It is an admitted fact that surplus income was sent home, but was not sent to the respondent but to his mother. This was a source of grievance for the respondent herein. The appellant should have recognised her status as a wife and should have atleast forwarded a portion of the surplus amount to her rather than sending the entire amount to his mother. After marriage, the appellant was expected to maintain a separate household for the respondent wife. Having failed to do so, the appellant cannot hide his own fault and put the blame on the respondent for any decision taken by her. She left her matrimonial home after it was confirmed that she had conceived. This was in May 2014. Subsequently in January 2015, a child was also born.



16. It is the grievance of the appellant that his parents were not invited for the baby shower function by the appellant. However, there is no evidence that the baby shower function was actually conducted by the respondent and there is no evidence of any invitation card had been printed and distributed in public and the parents of the appellant were deliberately omitted to be invited. The consistent stand of the respondent is that an official baby shower function was never conducted.

17. With respect to the birth of the child, again it is contended by the appellant that the birth of the child was never informed. This fact is also denied and disputed on behalf of the respondent. It was contended that very specifically information had been given and they had also visited to see the child. But, at any rate, we hold that since the appellant was not in this country, he cannot now complain about the conduct of the respondent herein. She had to necessarily go to her mother's house for the birth of the child. She had to remain in her mother's house even after the child birth. That cannot be stated to be an act of desertion.

18. The trial Court had considered all these aspects and had held that going over to the mother's house cannot be construed as an act of desertion. The



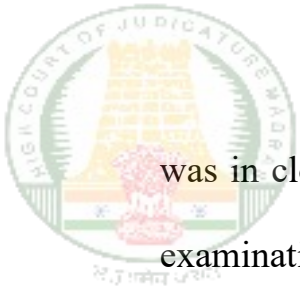
continuous stay of the respondent in her parents' house after the delivery, was also not considered to be an act of desertion by the trial Court.

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19. It had been held that she had to necessarily file an application seeking maintenance. This would only indicate that she had been deserted by the appellant herein rather than she deserting the appellant. There was a moral obligation on the part of the appellant to look after the respondent both financially and otherwise and also to provide her with necessary financial assistance for her and for the child. It was contended that owing to various medical ailments he could not continue with his work as a construction worker in Singapore. But even otherwise, this cannot be a ground to completely desert the respondent and not pay any maintenance amount at all.

20. It had been contended on behalf of the appellant that even after the issuance of the advocate notice, the respondent had not taken care to come back to the matrimonial house. However an explanation has been given that she was seven months in the family way and therefore she had taken a decision to stay in her parents' house.

21. As a reason for deserting the house, it had come out on evidence that the appellant herein had levied an unsubstantiated allegation that the respondent



was in close contact with a male person. However, during the course of cross examination or in the petition, the name of the said individual had not been mentioned and the cell phone number had not been mentioned and no other details has been given. This false allegation would have naturally affected the respondent herein. There was no necessity for the appellant herein to levy such a baseless allegation as against his own wife who had just given birth to a child. This conduct of the appellant, would only make the respondent grieve over the allegations and it would have been impossible for her to reconcile over such an allegation. It is not an act of desertion. The allegation raised by the appellant herein had driven the respondent to go to her mother's house. It is also to be noted that the appellant had not assisted her financially.

22. With respect to the acts of cruelty, the only act which are complained are prior to the birth of the child and immediately after the birth of the child. These acts cannot be construed as acts of cruelty. It is to be noted that both the parties are very closely related. The appellant or his parents can never claim ignorance about the birth of the child.

23. With respect to the baby shower function, it had been repeatedly pointed out that there was no evidence that such a function was ever held in public by the family members of the respondent.



24. With respect to the allegation that the respondent herein had lodged complaints against the petitioner, it is seen from the facts that it is only to protect her interest and to ensure that the jewels given by her parents are safe and in the interest of the child. It is to be noted that the Family Court at Tiruppur in M.C.No.6 of 2020, had directed maintenance to be paid. This fact itself would show that the appellant had not rendered financial assistance either to the respondent or to the child.

25. Taking an overall view of the entire issue, we hold that stray incident cannot be a ground of dissolution of marriage. They are only scratches in the marital life and we hold that the acts of the respondent are justified and it is the appellant who, taking advantage of his own fault, has sought dissolution of marriage. We are not inclined to interfere with the well considered Judgment of the trial Court.

26. This Civil Miscellaneous Appeal is dismissed. No costs.

(C.V.K,J.) (K.R.S,J.)
28-04-2026

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Index:Yes/No
Speaking/Non-speaking order
Neutral Citation:Yes/No



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**C.V. KARTHIKEYAN,J.
AND
K.RAJASEKAR,J.**

vum

To

The Family Court Judge, Tiruppur

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