



C.M.A(MD)No.107 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.01.2026

CORAM:

**THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

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T.S.Sam Dhas

... Appellant/Appellant

-VS-

P.S.Philomina Angelin

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 55 of the Indian Divorce Act, 1869, against the fair and decreetal order passed in I.D.O.P.No.04 of 2019 dated 24.01.2020 on the file of the Family Court, Tuticorin.

For Appellant : Mr.H.Arumugam

For Respondent : Mr.P.Edin Brough



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JUDGMENT

**(Judgment of the Court was delivered by
G.K.ILANTHIRAIYAN, J.)**

This Civil Miscellaneous Appeal is filed to set aside the fair and decreetal order passed in I.D.O.P.No.04 of 2019 dated 24.01.2020 on the file of the Family Court, Tuticorin, thereby dismissing the appellant's petition for divorce.

2. The appellant is the husband and the respondent is the wife.

3. The marriage of the appellant with the respondent was held at St. Patrick's Church, Tuticorin, on 17.01.2000. The appellant stated that, even before marrying the respondent, he was practicing as a Medical Consultant/Practitioner at Navalpattu, Tiruchirappalli and after their marriage, they started their life in Tiruchirappalli. It is



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the contention of the appellant that just after two months of the marriage, the respondent had started to compel the appellant to shift his medical practice to Tuticorin so that she could stay with her parents in their house. However, the appellant was not able to do so because of his existing responsibility to take care of his mother, brother and unmarried sister as his father had expired. This had led to constant quarrels between the appellant and the respondent causing loss of happiness in their marriage.

4. It is the further contention of the appellant that, eventually the respondent had gone to her parents' house and found excuses for not returning to the appellant's house. This has continued even during her pregnancy, where she had returned to the appellant's house about 1 year after birthing their child despite multiple requests from the appellant's end. Finally, on 29.10.2005, the respondent had permanently moved into her parents' house in Tuticorin and had not returned after that.



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5. At that juncture, the appellant had caused a legal notice on 05.04.2002 for which the respondent neither returned to the appellant's house nor replied to the notice. Subsequently, a petition for restitution of conjugal rights in I.D.O.P. 38 of 2002 was filed before the District Court, Tiruchirappalli and the same was dismissed as the respondent expressed her willingness to live with the appellant. The appellant contends that the respondent again started picking quarrels and as such made the life of the appellant miserable.

6. In furtherance to the same, appellant had filed a petition for divorce in I.D.O.P No. 25 of 2007 and the same was contested by the respondent and was quashed on 29.02.2012 in revision on the ground of jurisdictional error.

7. After failing in the above stated proceedings, the appellant had again filed a petition for divorce under Section 10(1)



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(ix) of the Divorce Act, 1869, on the ground of desertion in I.D.O.P.

No: 04 of 2019 dated 24.01.2020 on the file of the Family Court, Tuticorin wherein the Family Court had dismissed the petition and therefore, the appellant prays to allow this present appeal thereby granting him the relief of divorce.

8. However, on perusal of the counter filed by the respondent before the learned Principal District Judge, Tiruchirappalli, it is revealed that the appellant and his family members had suppressed the fact that the appellant had only finished grade 12 and that he is not a qualified medical practitioner. Furthermore, the appellant has been having illicit relationship with multiple women which infuriated the respondent and led to frequent quarrels between them. However, the respondent still hasn't filed any divorce petition from her end and also prays this Court to not interfere with the dismissal order of the Family Court.



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9. On the side of the appellant, the appellant examined himself as P.W.1, and twelve exhibits were marked as Ex. P1 to P12. On the side of the respondent, the respondent examined herself as R.W.1 and seven exhibits were marked as Ex. R1 to R7.

10. Heard the learned counsels appearing on either side and perused the materials available on record.

11. It is admitted that the appellant and the respondent got married on 17.01.2000 at the St. Patrick's Church, Tuticorin. They had started their marital life peacefully but after few days, issues have started to arise leading to loss of happiness in their marriage. On perusal of the records, it is revealed that the appellant and his family members had lied about his educational qualification wherein, the appellant had only completed his 12th standard but had stated that he completed B.Sc., M.B.B.S and has been practicing



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medicine in his residence. The marriage was solemnized by trusting the words of the appellant but soon after marriage, the respondent had unraveled truth about the appellant. This fact was completely suppressed in the Appellant's petition and on questioning about the same, no valid explanation was given by the appellant neither to the respondent nor before the Court of Law.

12. Even after this, the respondent had taken every effort to continue living with the appellant. Pursuant to the same, after the dismissal of I.D.O.P. 38 of 2002, the respondent had asked the appellant to shift to Tuticorin wherein the respondent's father had helped the appellant in settling his outstanding credit to the tune of Rs.50,000/- and had also established a medical shop for the appellant. Refusing to adjust to the said arrangement, the appellant had moved back to Trichy.



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13. The petitioner has also been in an illicit relationship at that time in Trichy and when the same was questioned by the respondent, he had deserted the respondent and was continuing the illicit relationship with his paramour for which the respondent had lodged a complaint against the petitioner before the Thiruvarambur Police Station. To suppress the same, the Appellant had filed a Divorce Petition in I.D.O.P. No: 25/2007 and subsequently another Divorce Petition was filed in I.D.O.P. No.04 of 2019.

14. Ex.R2 is a photograph of the appellant with a woman by his side and an infant in his hands. When the appellant was questioned about the same, he had stated that the women in the photo is his cousin and he doesn't know whose child it was. As rightly pointed out by the Family Court, the appellant could not have carried an infant and posed for a photograph without knowing as to whose child it is.



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15. It is crucial to note that the allegations put forth by the appellants are extremely trivial and does not bring to this Court, a pressing need to grant him the relief of divorce. Furthermore, the contentions of the respondent raise serious doubts on the conduct and fidelity of the appellant. Though the contentions of the respondent are serious in nature and though it feels like she has gone through a significant amount of mental cruelty, she was not the one who had knocked the door of this Court praying for divorce, rather it is the appellant who wants the marriage to be dissolved. This shows the respondent's good intentions as a devoted wife and also her willingness to reconcile with the appellant if he is willing to turn over a new leaf and mend his ways.

16. It is to be noted that, when it comes to the question of burden in a petition for divorce, the burden of proof lies on the appellant. In the case on hand, the appellant had failed to substantiate his case on the ground of desertion as the respondent



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has raised serious contentions against the appellant which was not disproved by the appellant in a way in which this Court can be convinced. Further, it can be seen that, it is the conduct of the appellant that has pushed the respondent to live separately from the appellant after failing in every attempt she had taken to save their marriage.

17. Similar view was also taken by the Hon'ble Supreme Court of India in the case of "***Siraj Mohammad Khan v. Hafezunnisa (AIR 1981 SC 1971)***", wherein the wife alleged continuous dowry demands made by her husband's parents and other relatives. The Hon'ble Supreme Court held that, based on the husband's conduct, the wife had a reasonable apprehension that she might be subjected to physical harm, thereby providing just and sufficient cause for her refusal to reside with her husband. Consequently, even though the respondent-wife was living separately, her conduct did not amount to desertion. On the contrary,



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the fault lay with the appellant-husband. In these circumstances, the appellant was not entitled to a decree of divorce on the ground of desertion.

18. The case cited supra is squarely applicable to the factual matrix of the case on hand. Accordingly, the findings rendered by the Family Court are just and reasonable and they are well considered and well merited. Therefore, the order of the Family Court does not warrant any interference of this Court at the appellate stage.

19. In the result, this Civil Miscellaneous Appeal is dismissed. No costs.

**[G.K.I.J.,] & [R.P.J.,]
08.01.2026**

NCC :Yes/No
Index :Yes/No
Internet :Yes
PS

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To

- 1.The Judge,
Family Court, Tuticorin.
- 2.The Record Keeper (Vernacular Records),
Madurai Bench of Madras High Court,
Madurai.



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AND
R. POORNIMA, J.

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