

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **20.02.2026**

Pronounced on : **08.06.2026**

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

C.M.S.A(MD)No.55 of 2021

and

C.M.P(MD)No.9815 of 2021

R.J.Sathish Kumar,
S/o.R.Jayakumar,
Occ: Private Employee,
R/o.Flat No.202, Challa Melody Apartments,
Kukatpally, Hyderabad - 500 072,
Now at No. 117d, Keela Raja Veedhi,
Mannargudi,
Thiruvapur Distrit – 614 001. ...Appellant/Appellant/Petitioner

Vs.

Nisha Priya,
W/o.R.J.Sathish Kumar,
H.No.57, Uma Sivan Nagar,
Srinivasapuram Extension,
Thanjavur - 09, Tamil Nadu.
Now at 1829, Keerai Kadai Lane,
South Main Street,
(Behind Veera Raghava Higher
Secondary School),
Thanjavur – 613 009. ...Respondent/Respondent/Respondent

PRAYER: Civil Miscellaneous Second Appeal is filed under Section 28 of the Hindu Marriage Act r/w Section 100 of the Civil Procedure Code, to set aside the order, dated 30.07.2021 in Civil Miscellaneous Appeal No.5 of 2019 on the file of the II Additional District and Sessions Judge, Thanjavur,



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confirming the order, dated 12.12.2018 in H.M.O.P.No.01 of 2014 on the file of the Additional Subordinate Judge, Thanjavur and allow this appeal filed by the appellant.

For Appellant : Mr.S.Ramasamy

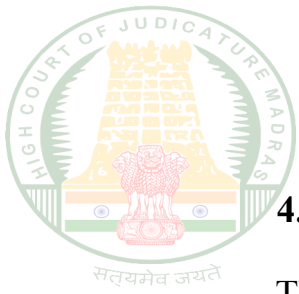
For Respondent : Mr.A.Arun Prasad

JUDGMENT

This Civil Miscellaneous Second Appeal is preferred against the judgment and decree, dated 30.07.2021 passed in C.M.A.No.5 of 2019 on the file of the II Additional District and Sessions Court, Thanjavur, confirming the order, dated 12.12.2018 passed in H.M.O.P.No.1 of 2014 on the file of the Additional Subordinate Court, Thanjavur.

2.The appellant is the petitioner/husband in H.M.O.P.No.1 of 2014 and the respondent is the respondent/wife therein.

3.For the sake of convenience, the parties are referred to as petitioner/husband and respondent/wife as arrayed in H.M.O.P.No.1 of 2014 on the file of the Additional Subordinate Court, Thanjavur.



4.Case of the petitioner/husband:-

The petitioner and the respondent are husband and wife. Their marriage was solemnized on 13.02.2011 as per the Hindu rites and customs at Thanjavur. After marriage, they led a matrimonial life in Hyderabad. Out of wedlock, a male child was born on 21.12.2011. After delivery, the respondent returned to Hyderabad on 28.02.2012. At the instigation of extraneous persons, including her parents, the respondent wantonly failed to abide by the request of the petitioner and left him. In spite of talks, the respondent and her family members threatened the petitioner and his family that they would put them to immense hardship by invoking criminal proceedings. So, the petitioner and his family members obtained anticipatory bail from the High Court of Madras in CrI.O.P(MD)No.7326 of 2012. Before the Tamil Nadu Mediation Centre, Chennai, both parties agreed to live together and the respondent accompanied the petitioner to Hyderabad on 10.07.2012. However, the respondent started to harass the petitioner. There were unnecessary quarrel made by her on 12.08.2012 and 13.08.2012. The respondent threatened the petitioner with a knife for committing suicide and to harm him as well. On 14.08.2012, when the petitioner was in his office, the respondent left the matrimonial home without the consent of the petitioner by sending an e-mail stating that she was leaving the matrimonial house as she was not getting the affection she expected from the petitioner.



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She also sent an SMS with a false complaint to the Thanjavur police against the petitioner. When the respondent was pregnant, the respondent used to tell the father of the petitioner to abort the child. From the beginning, the respondent was adamant in nature and did not show any interest in matrimonial life and she used to harass the petitioner by using filthy words. Because of the attitude of the respondent, the petitioner suffered not only from mental strain but also physical strain. The respondent left the matrimonial home on 14.08.2012 and has been living with her parents. There is no possibility of reunion. Hence, the petitioner has filed a petition against the respondent seeking a divorce.

5.Case of the respondent/wife:-

The marriage of both parties and the birth of a male child are admitted. The respondent along with the child, went to Hyderabad and resided there until 28.02.2012. The parents and sister of the petitioner demanded a diamond stud and a silver kuthuvilakku. Upon her refusal, the petitioner attacked the respondent, so she informed the same to her paternal uncle, who lodged a police complaint before the All Women Police Station, Thanjavur. An enquiry was conducted by the police and the petitioner and his parent assured them that they would take back the respondent within one month. But the petitioner sent a legal notice to the respondent on 10.04.2012.



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In the meantime, before the Mediation Centre, the High Court of Madras, on giving assurance, the respondent was taken back. But the petitioner and his family members did not change their attitudes. On 13.08.2012, the petitioner scolded the respondent and strangled her neck, so she was admitted in a private hospital. On 19.08.2012, the petitioner and his family members came to the respondent's parental home and told them that if dowry was given, the respondent could live with him. Hence, the respondent lodged a police complaint on 20.08.2012. The complaint was sent to the Social Welfare Department for enquiry, but the petitioner did not come forward for enquiry in spite of several notices. Despite this, he has filed this petition for divorce with false averments before the Family Court, Hyderabad. The respondent filed Tr.O.P. before the Supreme Court. While that petition was pending, the petitioner and his family members demanded Rs.5,00,000/- to purchase a plot and the petitioner also demanded Rs.5,00,000/- to go to America. The respondent tolerated all the cruelties of the petitioner only for the future of her child. The respondent has always been a dutiful wife to the petitioner and she was performing all affairs for the petitioner as a dutiful wife. The respondent has never committed any cruelty or desertion. Hence, the petition may be dismissed.



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6. During enquiry before the Trial Court, both parties have adduced evidence. The petitioner/husband examined himself as P.W.1 and marked 7 exhibits as Ex.P.1 to Ex.P.7. The respondent/wife has examined herself as R.W.1 and marked 6 exhibits as Ex.R.1 and Ex.R.6.

7. After hearing both sides and after considering both side evidence, the learned Additional Subordinate Judge, Thanjavur, was not inclined to grant a divorce and dismissed the petition in HMOP.No.1 of 2014 by passing an order, dated 12.12.2018.

8. Aggrieved by the said order, the petitioner/husband has preferred the Civil Miscellaneous Appeal in CMA.No.5 of 2019 before the II Additional District and Sessions Court, Thanjavur. The first Appellate Court, after hearing both sides and after considering the material records, passed the judgment and decree, dated 30.07.2021, dismissing the Civil Miscellaneous Appeal and confirming the dismissal of HMOP.No.1 of 2014.

9. Challenging the judgment and decree of the First Appellate Court, the petitioner/husband has preferred this Civil Miscellaneous Second Appeal and the same has been admitted on the following substantial question of law:-

When the learned Additional Subordinate



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Judge, Thanjavur, admitted that the respondent/wife had given a criminal complaint, if so, whether it amounts to mental cruelty?

10.The learned counsel for the petitioner/husband has placed arguments that the petitioner/husband was working as a software engineer at Hyderabad and his marriage with the respondent/wife was solemnized on 13.02.2011. Both started living in Hyderabad and out of wedlock, the respondent was conceived. The respondent's father called the petitioner/husband's father to abort the child, for that he was warned. When they were living in Hyderabad, the respondent was adamant in nature and did not show any interest in marital life and did not perform her marital duties. The respondent shouted with a loud voice against the petitioner/husband in the presence of neighbours and started to harass him even for small matters. The respondent left the house of the petitioner and stayed with her friend in the same apartment in Hyderabad on 17.03.2012. Neighbours pacified them. The respondent left Hyderabad without any reason by abandoning the petitioner and thereafter, laid a false complaint of dowry against the petitioner and his family members before AWPS, Thanjavur. So, the petitioner obtained anticipatory bail and since the matter was compromised, the FIR was not registered. Thereafter, on compromise talks, the petitioner took the respondent to Hyderabad. Again on 12.08.2012 and



13.08.2012, the respondent threatened the petitioner with life and also told that she was committing suicide. The respondent scolded the petitioner with filthy words and left the matrimonial home in Hyderabad on 14.08.2012. So, the petitioner filed a divorce petition on the grounds of cruelty and desertion. The respondent had frequent quarrels and lodged a police complaint, which caused mental cruelty.

11.The learned counsel for the petitioner has further argued that the petitioner filed a proof affidavit narrating the events chronologically, but the trial Court as well as the first Appellate Court have not considered the same and held that cruelty and desertion were not attracted. The evidence of the petitioner was not disproved by the respondent/wife. The Court cannot expect documentary evidence to prove the fact of cruelty and desertion. Even the first Appellate Court has given a finding that the respondent has lodged a criminal complaint against the petitioner and his family members, but held that it would not amount to cruelty. The Courts below failed to consider the evidence that the respondent caused mental agony to the petitioner by scolding with filthy words in the presence of the neighbours and others and thereby spoiled the reputation of the petitioner. Due to the acts of the respondent, she caused mental cruelty to the petitioner. Both the Courts below failed to consider all these aspects and dismissed the petition for



divorce filed by the petitioner. After a child was born on 21.12.2011, the respondent has been living separately along with the child for a long period, more than 14 years. Therefore, the marriage bond between the petitioner and the respondent is broken and there is no possibility for reunion. Two times the matter was referred to mediation, but it was not settled. Therefore, this appeal may be allowed.

12. In support of his argument, the learned counsel for the petitioner has relied on the citation reported in **(2021) 3 Supreme Court Cases 742** in the case of **Joydeep Majumdar /v/ Bharti Jaiswal Majumdar** in paragraph Nos.11, 13 and 16 are as follows:

"11. The materials in the present case reveal that the respondent had made several defamatory complaints to the appellant's superiors in the Army for which, a Court of inquiry was held by the Army authorities against the appellant. Primarily for those, the appellant's career progress got affected. The Respondent was also making complaints to other authorities, such as, the State Commission for Women and has posted defamatory materials on other platforms. The net outcome of above is that the appellant's career and reputation had suffered.

13. Proceeding with the above understanding, the question which requires to be



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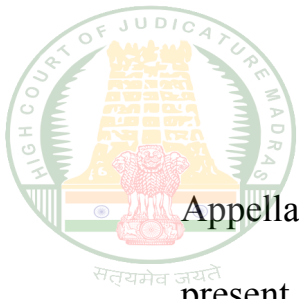


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answered here is whether the conduct of the respondent would fall within the realm of mental cruelty. Here the allegations are levelled by a highly educated spouse and they do have the propensity to irreparably damage the character and reputation of the appellant. When the reputation of the spouse is sullied amongst his colleagues, his superiors and the society at large, it would be difficult to expect condonation of such conduct by the affected party.

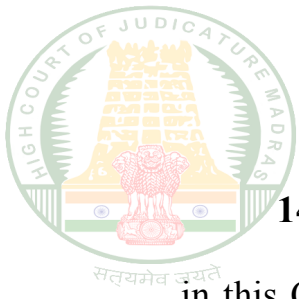
15. Therefore, we are of the considered opinion that the High Court was in error in describing the broken relationship as normal wear and tear of middle class married life. It is a definite case of cruelty inflicted by the respondent against the appellant and as such enough justification is found to set aside the impugned judgment of the High Court and to restore the order passed by the Family Court. The appellant is accordingly held entitled to dissolution of his marriage and consequently the respondent's application for restitution of conjugal rights stands dismissed. It is ordered accordingly.

13. Per contra, the learned counsel for the respondent/wife has vehemently contended that the trial Court has dismissed the divorce petition after a thorough appreciation of oral and documentary evidence. The first



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Appellate Court has confirmed the dismissal order of the trial Court. So, the present appeal is devoid of merit after concurrent findings given by the Courts below. It is well settled law that concurrent findings of fact by the Courts below cannot be interfered with unless perverse findings are established by evidence. The petitioner has not proved either cruelty or desertion having failed to examine any other independent witnesses, even the parents of the petitioner were not examined before the trial Court. The Hon'ble Supreme Court has repeatedly held that the parameter of mental cruelty do not include a trivial irritations as quarrels are normal in matrimonial life and it do not amount to mental cruelty. The petitioner is causing harassment to the respondent by prolonging her mental agony and misusing judicial time even when the respondent is willing to resume matrimonial life, whereas the petitioner has consistently avoided the same. The respondent has not made any false complaint. Since the petitioner and his family members assaulted the respondent and caused injury, the respondent lodged a police complaint, so it will not come under cruelty. The respondent is living along with her son and the petitioner has not taken care of them. The Courts below have correctly appreciated the evidence adduced by both parties and correctly dismissed the petition for divorce. There is no question of law arising in this appeal and therefore, this appeal may be dismissed.



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14. Heard the arguments of both sides and perused the material records in this Civil Miscellaneous Second Appeal. It is admitted by both sides that the marriage between the petitioner and the respondent was solemnized on 13.02.2011. On 18.08.2012, the petitioner has filed a petition before the Family Court, Hyderabad, for divorce on the grounds of desertion. Since the petition was filed without exhausting two years period, the ground of desertion is not a valid ground. The petitioner mainly argued that the respondent caused cruelty upon the petitioner in the presence of neighbours while living in Hyderabad. On perusal of the records, it is clear that the petitioner/husband has not examined any independent witness, much less any one of neighbour to prove the same.

15.In this appeal, the petitioner mainly relied on the observation of the first Appellate Court that the first Appellate Court which admitted the criminal complaint lodged by the respondent/wife. It is the case of the respondent/wife that since she was subjected to harassment by demanding more dowry and was physically attacked by them, she lodged a police complaint. It is also the case of the respondent that the dowry harassment complaint was referred to the Social Welfare Department for enquiry, but the petitioner did not attend the enquiry in spite of several notices. To substantiate the same, the respondent has marked Ex.R.2 - Medical



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records, Ex.R.3 & Ex.R.4 - Receipts for accepting police complaints, Ex.R.5 - Information furnished by the Social Welfare Office, Thanjavur under RTI Act and Ex.R.6 - Proceeding taken by the Deputy Superintendent of Police, Thanjavur. The petitioner has not specifically denied them and has not taken any steps to disprove the same.

16.On perusal of the records, it is also clear that the petitioner has not proved that the respondent has lodged a false police complaint. The learned brother Judge of this Court, in his judgment, dated 12.07.2023, passed in C.M.S.A(MD)No.15 of 2011, held that the litigation initiated by the wife to protect her right will not amount to cruelty. In the judgment, it is held in paragraph Nos.19 as follows:

“19. ...The litigation initiated by the wife is only to protect her property rights and her custody of her son. When the initiation of such proceedings is for the vindication of her rights, the said proceedings can never be considered to be a ground for mental cruelty....”.

17.The next point raised by the petitioner is that the respondent has been living separately for more than 14 years, which also caused mental agony and there is no possibility for reunion and relied on the ruling reported



in (2021) 3 Supreme Court Cases 742 in the case of Joydeep

Majumdar /v/ Bharti Jaiswal Majumdar. On perusal of that case, the wife in that case sent a complaint to the higher official of her husband, who served in the Army and the husband was served the same for reply and also the spouses in that case have no issue and they have been living separately for 25 years. In those circumstances, the Hon'ble Supreme Court dissolved the marriage. But this case on hand is totally different. The respondent/wife gave birth to a male child out of wedlock and there is no material produced by the petitioner/husband to show that the respondent sent any complaint to his higher official to defame his reputation. Therefore, the citation is not applicable to the facts of this case. It is also borne in mind that the respondent has shown her willingness to live jointly with the petitioner, even at this second appeal stage also, but the petitioner has not taken any steps for restitution of conjugal rights. Thus, the Courts below have correctly held that the petitioner has not established the grounds of desertion and cruelty against the respondent and rightly dismissed the petition for divorce filed by the petitioner.

18.From the above facts and circumstances, the petitioner has not established his case and therefore, the substantial question of law is decided against the petitioner/appellant herein. This Court is of the considered view



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that the case of the petitioner is not proved by him as correctly decided by the Trial Court and confirmed by the first Appellate Court. The concurrent finding of the Courts below does not warrant interference by way of this appeal. Thus, this Civil Miscellaneous Second Appeal fails.

19.In the result, this Civil Miscellaneous Second Appeal is dismissed. The judgment and decree, dated 30.07.2021 passed in C.M.A.No.5 of 2019 on the file of the II Additional District and Sessions Court, Thanjavur, confirming the order, dated 12.12.2018 passed in H.M.O.P.No.1 of 2014 on the file of the Additional Subordinate Court, Thanjavur are confirmed. No costs. Consequently, the connected Civil Miscellaneous Petition stands dismissed.

08.06.2026

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

VSD

To

1.The II Additional District and Sessions Judge,
Thanjavur.

2.The Additional Subordinate Judge,
Thanjavur.

3.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P.VADAMALAI, J.

VSD

Pre - Delivery Judgment made in
C.M.S.A(MD)No.55 of 2021
and
C.M.P(MD)No.9815 of 2021

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