



C.M.A(MD)No.384 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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Godhandam ... Appellant/Petitioner

-VS-

Irulayee ... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, against the fair and decreetal order made in H.M.O.P.No.215 of 2017 dated 06.07.2018 on the file of the Family Court, Sivagangai.

For Appellant : Mr.R.Suriyanarayanan

For Respondent : Ms.Epsiba
for Mr.R.Aravind Raj



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JUDGMENT

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

This Civil Miscellaneous Appeal has been preferred against the Judgment and Decree passed in H.M.O.P.No.215 of 2017 dated 06.07.2018 on the file of the Family Court, Sivagangai, whereby dismissing the petition for divorce.

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

3. Heard the learned Counsels appearing on either side and perused the materials available on record.

4. The appellant and the respondent got married on 19.08.1999. From the day of the marriage, the respondent had shown the appellant her unwillingness to lead a peaceful life with him. She



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had allegedly abused the appellant physically and verbally and insisted on living separately. Consequently, they got separated and the appellant filed a petition for divorce on the ground of cruelty under Section 13(1) (ia) of the Hindu Marriage Act, 1955.

5. On the side of the appellant, two witnesses were examined as PW1 and PW2, and five exhibits were marked as Exs.P1 to P5. On the side of the respondent, two witnesses were examined as RW1 and RW2 and no exhibit was marked on the side of the respondent.

6. On perusal of the records, it is revealed that the respondent did not cooperate with the appellant for sexual cohabitation. Further she had stated that she was not willing to marry the appellant. Further she had abused the family members of the appellant and had damaged the utensils of the house by throwing it out of anger. After giving birth to two daughters, she had also



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insisted the appellant for living separately. Subsequently, the family member of the appellant had made the respondent live separately along with their two daughters. At this juncture, in the year 2013, the elder daughter of the appellant and respondent who was examined as PW1 had seen the respondent having illicit affair with another man. Thus, the respondent had committed cruelty to the appellant and as such he filed a petition for divorce on the ground of cruelty.

7. However, the Family Court had dismissed the petition for divorce filed by the appellant, without properly appreciating the evidence of the appellant and concluded that there is no evidence of cruelty by the respondent to the appellant and that the contention of adultery was not properly proved by the appellant. That apart, the Family Court has taken a specific stand that the appellant has sought for divorce only on the ground of cruelty and therefore, the allegation of adultery cannot be considered. Further the Family Court had wrongly concluded that the appellant and his family



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members were the ones who made the respondent stay separately from the appellant, thereby disregarding the years of mental agony that the respondent had caused the family of the appellant.

8. Further, one of the main reasons that the respondent was asked to live separately is that, her behavior had led to a suspicion on her fidelity. Even after being questioned by the appellant about her suspicious behavior on multiple occasions, the respondent had failed to provide an explanation and had chosen to leave the house and live separately and to this date, she has not attempted to reconcile with the appellant.

9. On the perusal of the evidence of PW2, it is revealed that PW2 who is daughter of the respondent and the appellant has seen the respondent talking to a man. The exact words of PW2 are extracted hereunder:



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“எங்கள் வீட்டிற்கு பக்கத்தில் உள்ள குடோனில் எனது அம்மாவும் குடோனில் வேலை பார்க்கும் ஒரு ஆண் நபரும் சேர்ந்து இருந்ததை நான் பார்த்தேன். பேசிக்கொண்டிருந்தார்கள்.....

எனது அம்மா குடோனில் ஒரு ஆண் நபரிடம் பேசிக்கொண்டிருந்த போது என்ன பேசிக்கொண்டிருந்தார் என்பது எனக்கு தெரியாது.”

10. Though there is not much detail about the alleged occurrence, it is crucial to note the fact that the own daughter of the respondent was willing to depose against her. This creates a doubt on the conduct of the respondent and also reveals the hostility that she has created within her family.

11. Therefore, though the contention of adultery was not proved clearly, it is not correct to disregard the mental agony that the conduct of the respondent had caused to the appellant. Further, 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,



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however, the degree of probability is not one beyond reasonable doubt, but of preponderance.

12. Further, the Family Court, while dealing with the present case, has trivialized the mental cruelty that was suffered by the appellant by the respondent by sticking to strict interpretations of the details and standards of proof. The Family Court has perceived the allegations of appellant as general without understanding how the same might have affected him. While dealing with divorce petitions, certain degree of empathy is required as it deals with the institution of marriage which is innately sensitive having human emotions attached to it. A cut and right rule of interpretation of details or proof is not advised to be drawn while dealing with such an intricate relationship. A similar line of thought was also enunciated by the Hon'ble Supreme Court of India in the case of "***Smt. Roopa Soni v. Kamalnarayan Soni (2023 INSC 814)***", and the relevant paragraphs of the judgment is extracted hereunder:



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“6. In Vishwanath Agrawal v. Sarla Vishwanath Agrawal, (2012) 7 SCC 288 this Court sufficiently sets out:

“ 22. The expression “cruelty” has an inseparable nexus with human conduct or human behaviour. It is always dependent upon the social strata or the milieu to which the parties belong, their ways of life, relationship, temperaments and emotions that have been conditioned by their social status.

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25. After so stating, this Court observed in Shobha Rani case [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] about the marked change in life in modern times and the sea change in matrimonial duties and responsibilities. It has been observed that: (SCC p. 108, para 5)

“5. ... when a spouse makes a complaint about the treatment of cruelty by the partner in life or relations, the court should not search for standard in life. A set of facts stigmatised as cruelty in one case may not be so in another case. The cruelty alleged may largely depend upon the type of life the parties are



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accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance.”

26. Their Lordships in Shobha Rani case [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] referred to the observations made in Sheldon v. Sheldon [1966 P 62 : (1966) 2 WLR 993 : (1966) 2 All ER 257 (CA)] wherein Lord Denning stated, “the categories of cruelty are not closed”. Thereafter, the Bench proceeded to state thus: (Shobha Rani case [(1988) 1 SCC 105 : 1988 SCC (Cri) 60] , SCC p. 109, paras 5-6)

“ 5. ... Each case may be different. We deal with the conduct of human beings who are not generally similar. Among the human beings there is no limit to the kind of conduct which may constitute cruelty. New type of cruelty may crop up in any case depending upon the human behaviour, capacity or incapability to tolerate the conduct complained of. Such is the wonderful (sic) realm of cruelty.

6. These preliminary observations are intended to emphasise that the court in matrimonial



cases is not concerned with ideals in family life. The court has only to understand the spouses concerned as nature made them, and consider their particular grievance. As Lord Reid observed in Gollins v. Gollins [1964 AC 644 : (1963) 3 WLR 176 : (1963) 2 All ER 966 (HL)] : (All ER p. 972 G-H)

‘... In matrimonial affairs we are not dealing with objective standards, it is not a matrimonial offence to fall below the standard of the reasonable man (or the reasonable woman). We are dealing with this man or this woman.’ ”

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32. In Samar Ghosh v. Jaya Ghosh [(2007) 4 SCC 511], this Court, after surveying the previous decisions and referring to the concept of cruelty, which includes mental cruelty, in English, American, Canadian and Australian cases, has observed that: (SCC pp. 545-46, paras 99-100)

“ 99. ... The human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one



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definition is almost impossible. What is cruelty in one case may not amount to cruelty in the other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system.

100. Apart from this, the concept of mental cruelty cannot remain static; it is bound to change with the passage of time, impact of modern culture through print and electronic media and value system, etc. etc. What may be mental cruelty now may not remain a mental cruelty after a passage of time or vice versa. There can never be any straitjacket formula or fixed parameters for determining mental cruelty in matrimonial matters. The prudent and appropriate way to adjudicate the case would be to evaluate it on its peculiar facts and circumstances....”

(emphasis supplied)

7. We would like to emphasize that an element of subjectivity has to be applied albeit, what constitutes cruelty is objective.”



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13. Therefore, this Court is of the view that though the allegation of adultery was not proved beyond reasonable doubt, the conduct of the respondent has raised a suspicion in the mind of the appellant and the respondent has also failed to take any genuine steps to amicably solve the sustained turbulence in the marriage and it is seen that only because of the said reason, the respondent was asked to live separately by the appellant's family.

14. In this regard, it is relevant to rely upon the Judgment of the Hon'ble Supreme Court of India in the case of "***Samar Ghosh Vs. Jaya Ghosh [(2007) 4 SCC 511]***", wherein it has been held as follows:

".....(xiv) Where there has been a long period of continuous separation, it may fairly be concluded that the matrimonial bond is beyond repair. The marriage becomes a fiction though supported by a legal tie. By refusing to sever that tie, the law in such



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cases, does not serve the sanctity of marriage; on the contrary, it shows scant regard for the feelings and emotions of the parties. In such like situations, it may lead to mental cruelty.”

15. The ratio laid down in the above judgment squarely applies to the facts of the present case. From the year 1999 onwards, the appellant has been subjected to continuous mental cruelty at the hands of the respondent and they both have been living separately for a significantly long period of time and as such the matrimonial bond is beyond repair. Therefore, the marital relationship between the appellant and the respondent had already broken down and there is absolutely no possibility of reunion.

16. In view of the above, the Judgment and Decree passed in in H.M.O.P. No.215 of 2017 dated 06.07.2018 on the file of the Family Court, Sivagangai, cannot be sustained and is liable to be set aside. Accordingly, the same is set aside. The divorce petition filed

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by the appellant is allowed and the marriage between the appellant and the respondent is hereby dissolved.

17. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs.

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

NCC :Yes/No
Index :Yes/No
Internet :Yes
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To

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



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G.K. ILANTHIRAIYAN, J.
AND
R. POORNIMA, J.

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