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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 25.07.2024

PRONOUNCED ON : 23.09.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.S.A.(MD)Nos.27 and 28 of 2015

... Appellant in both cases
Vs.
...Respondent in both cases

PRAYER in C.M.S.A(MD)No.27 of 2015: Civil Miscellaneous Second Appeal is filed under Section 100 of the C.P.C., read with Section 28 of the Hindu Marriage Act, 1955, against the judgment and decree, dated 30.04.2015, passed in H.M.C.M.A.No.2 of 2011 on the file of the II Additional District Sessions Court, Thoothukudi, confirming the judgment and decree, dated 25.10.2010 passed in Divorce Petition in H.M.O.P.No.178 of 2008 on the file of the Subordinate Court, Thoothukudi.

PRAYER in C.M.S.A(MD)No.28 of 2015:: Civil Miscellaneous Second Appeal is filed under Section 100 of the C.P.C., read with Section 28 of the Hindu Marriage Act, 1955, against the judgment and decree, dated 30.04.2015, passed in H.M.C.M.A.No.3 of 2011 on the file of the II Additional District Sessions Court, Thoothukudi, confirming the judgment and decree, dated 25.10.2010 passed in Divorce Petition in H.M.O.P.No.183 of 2008 on the file of the Subordinate Court,



In both cases:

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For Appellant : Mr.V.K.Vijaya Raghavan
for Mr.K.C.Ramalingam

For Respondent : Mr..Saravanan
Senior Counsel
for Mr.T.Senthil Kumar

COMMON JUDGMENT

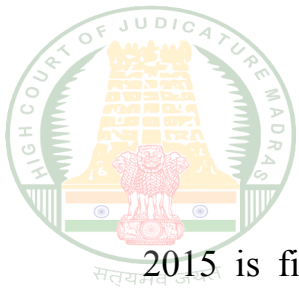
Both the Civil Miscellaneous Second Appeals are filed by the husband against the common judgement and decree. Hence, both the cases were taken up together and a common judgment is passed.

2.(i) C.M.S.A.(MD)No.27 of 2015:

The present Civil Miscellaneous Second Appeal in C.M.S.A.(MD)No.27 of 2015 is filed by the husband against the Judgment and Decretal order dated 30.04.2015 passed in H.M.C.M.A.No.3 of 2011 on the file of the II Additional District and Sessions Court, Thoothukudi, by confirming the Judgment and Decretal order dated 25.10.2010 passed in H.M.O.P.No.183 of 2008 on the file of the Subordinate Court, Thoothukudi.

2.(ii) C.M.S.A.(MD)No.28 of 2015:

The present Civil Miscellaneous Second Appeal in C.M.S.A.(MD)No.28 of



2015 is filed by the husband against the Judgment and Decretal order dated 30.04.2015 passed in H.M.C.M.A.No.2 of 2011 on the file of the II Additional District and Sessions Court, Thoothukudi, by confirming the Judgment and Decretal order dated 25.10.2010 passed in H.M.O.P.No.178 of 2008 on the file of the Subordinate Court, Thoothukudi.

3. The H.M.O.P.No.183 of 2008 was filed by the wife for restitution of conjugal rights and the same was allowed, against which the husband had preferred appeal in HM.CMA No.3 of 2011 and the same was dismissed, aggrieved over the same the C.M.S.A.(MD)No.27 of 2015 if filed. The HMOP No.178 of 2008 was filed by the husband for divorce and the same was dismissed, against which the husband had preferred appeal in HM.CMA No.2 of 2011 and the same was dismissed, aggrieved over the same the present C.M.S.A.(MD)No. 28 of 2015 is filed.

4. The brief facts as stated by the husband is that the marriage between the parties was solemnised on 16.05.2004 at Dindigul as per their customs and rituals. Since both of them are relatives, the wife's parents had given various jewels and other gifts to the wife, except dowry. After the marriage both husband and wife were residing in Pondicherry. The husband was serving as Medical Referee in ESI Corporation and initially the wife was staying as homemaker but later on was



serving as Doctor in Science Forum for Rs.10,000/- as salary. The disputes started

immediately after marriage. The wife never allowed the husband's relatives to their home, further the wife demanded the husband to listen to her, imposed condition that the husband should not talk to his parents and should never have any connection with his family. If not, threatened the husband that she would commit suicide or file false dowry case against the husband's entire family through her father and brother who are Advocates in High Court. Since the parents of the husband are heart patient, the husband was tolerating all the insults meted out by the wife. But the insults were increasing day-by-day. When the husband's sister had invited the couples for wedding feast, but the wife refused to attend the same, but the husband was patiently handling the issues. In the meanwhile, the couples had a daughter namely Neha. When the first birthday celebrations of the daughter were planned on 24.03.2005, again there was fight between the couples, wherein the husband's mother alone had come to attend the function, but the wife had objected for the husband's mother participating in the function, which ended in attempting suicide by the wife and she was admitted in Jipmer hospital and treated her. The brother of the wife called the husband over phone and insisted to take the wife home and directed the husband should handle the wife properly otherwise he should face dire consequences of facing false dowry case. The other allegations are that the wife did not allow the husband to be with the daughter. Further the wife was insisting to live a luxurious life, since the



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husband was serving as a doctor in ESI Corporation with meagre salary, the wife insisted to earn more and started comparing with one of her brothers, who was earning more than 1½ lakhs in information technology. Also compared with one Ganesan who was working as radiologists and insisted to do radiology as post-graduation course instead of ENT. And also stated if she had married the said Ganesan she would have lived a better life. The wife never carried on her duties as “wife”. Further when the husband’s mother was admitted in Hospital for heart treatment the wife did not allow the husband to visit his mother, threatened if visited his mother she will prefer a dowry harassment complaint against the husband, his parents, sisters-in-law and also commit suicide. Also stated after marrying the petitioner she is living as “poor” and insulted the husband quite often. The husband transferred from Pondicherry to Madurai on 05.02.2007 and she complained about the smaller house and insisted to take a bigger house. Also fixed a house for ₹3500 rent through her father, but when the husband refused to move to this ₹3500/- rented house, she stated she cannot live in a low-class house and fought with the husband. On 20.02.2007 her father visited the house and the wife took her daughter and left the home along with her father. Thereafter the wife visited the husband’s work place at ESI hospital and picked up quarrel and disturbed him during duty hours, again insisted to live in the house rented for ₹3500 and refused to live in a house fixed by the husband. When there was continuous cruelty, the husband issued lawyer notice dated 28.02.2007 for



divorce. On the same day, the brother of the wife along with seven or eight persons visited the husband's parents' house at Tirunelveli at 2 pm insulted and threatened them with dire consequences, the parents fearing them had locked the house from inside and several hours they could not come out of the house. Thereafter, the mother had preferred police complaint to Perumalpuram Police Station and Palayamkottai All Women Police Station. The husband had preferred telegram on 01.03.2007 to Director General of Police, Chennai, Commissioner of Police, Madurai, Commissioner of Police, Tirunelveli and Superintendent of Police, Dindigul stating his parents were illegally detained and kept them under house arrest by the wife's brother along with goondas and threatened them that they would not let them go out, until their son comes home or else to face the dire consequences. Already the husband's parents were heart patient, after the above incident they were forced to live along with their daughter in the daughter's place. After the above incident, the wife preferred police complaint alleging the husband and his family are demanding dowry. Based on the complaint the concerned police officials had summoned the husband and his family for the enquiry and also the police had visited the husband's workplace in order to search the husband, thereby the wife and their family did not allow the husband to work peacefully. In the meanwhile, the wife's brother along with the 2 or 3 persons threatened to the petitioner and demanded signature in the blank papers. The husband and their entire family including the married sisters were forced to file anticipatory bail



application before the High Court. In the meanwhile, the husband returned all the articles of the wife to her parents' house. The gold jewels were always with the wife and the same is with her. All these acts of the wife made the petitioner to decide that hereafter they cannot live together and filed the petition for divorce.

5. The respondent wife had filed counter and denied the entire contents stated in the divorce petition. The contention of the husband that the parties are relatives is denied and hence the dowry was not demanded is also denied as false. In the lawyer notice dated 28.02.2007, the husband has admitted receipt of dowry and other articles. The allegation the wife has taken the Jewels and the husband has returned the other articles will prove the husband has received dowry, jewels and other articles. But the fact remains the father has not received the articles. The husband has received 100 sovereign gold, five lakhs cash and other articles like TV, air-conditioner, washing machine, refrigerator sofa set and silver articles amounting to 3 lakhs rupees as dowry, which is also stated in the reply notice issued by the wife. The wife further stated she was working in Science Forum, Pondicherry and receiving Rs.10,000/- as salary and the salary was also handed over to the husband. From 04.06.2004 both of them started residing in Pondicherry and at that time the husband's sister and her husband (who is husband's maternal uncle "thaimama") came and stayed with them for two days.

On a subsequent date, since the house was not sufficient to keep all the house hold



articles, the parties shifted to different house and during that time also the husband's sister and her husband came, shifted the articles, stayed with them for two days and left. The attempt to suicide by taking rat poison is denied. If it is so the wife ought to have been treated in hospital. No such evidence is produced by the husband. In the lawyer notice the husband has stated on every Sunday some guests would come, but the wife threatened that she will consume phenol and commit suicide and the same is denied as false and stated that no normal person who commit such act. The wife also denied the allegation that the wife is not listening to the husband and deny that she would threaten to file dowry harassment case against the husband and his family. The wife denied she intended for luxurious life and submitted she always wishes simple life. Further submitted that the husband after birth of the daughter demanded a dowry, since the same was not paid, the husband and his family refused to visit the daughter after the birth of the daughter. Hence an amount of Rs.60,000/- was paid to buy the car and balance amount was paid by obtaining loan from the bank and the EMI was paid from the wife's salary. The allegation that the wife had compared with his brother and one Ganesan and demanded to earn more is denied and submitted by mentioning the name of Ganesan, the crooked intention of the husband is evident. The wife further stated that she is aware that the husband is working in a Central Government Service and any prudent woman would not demand to leave such service. Further she is aware of the fact that if any clinic is started in Pondicherry,



the same would affect his government service and for that reason she did not start

any clinic in Pondicherry. The wife denies the allegation that she refused to leave

the child to the husband and submitted that in Pondicherry only both of them were

there and whenever she was not available, then the husband alone ought to take

care of the child. The allegation that the wife attempted suicide for the reason that

the mother-in-law came for their daughter's first birthday is denied. During that

time the husband demanded 2.5 lakhs for his higher studies and the family of the

wife declined to grant the said amount, hence the husband fought with the wife

and slapped her before her parents and also disrespected her parents. After the

said incident, the husband refused to celebrated the first birthday of their daughter

and demanded all the visitors to leave the home and the wife's family left the

home. Since the child's first birthday could not be celebrated, the wife attempted

suicide, the same was intimated to the wife's brother, they returned halfway,

admitted her in Jipmer Hospital and first brother and his wife came to assist the

wife. But the husband's mother left immediately and went to Chennai. When the

police enquired, the wife and their family did not want to create problem in the

family life and hence the complaint was not preferred. Further the allegation the

wife did not act as a wife and she disrespected the husband's parents are denied.

The allegation that on 06.02.2007 when the husband was transferred from

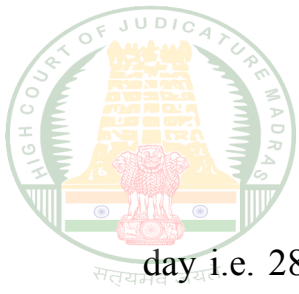
Pondicherry to Madurai, the wife declined to stay in the rented house describing

the house as "low class house" is denied. The wife had resigned the job in



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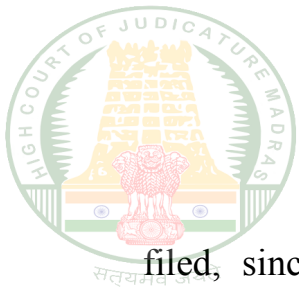
Scientific Forum and started along with the husband and came to Madurai on 05.02.2007 night. But the very next day, the husband demanded Rs.25,00,000/- dowry for his higher studies and physically assaulted the wife. At that time the wife's father, who is serving as Advocate in High Court Madurai, had visited home and the father had sought some time. Since the amount was not paid the husband did not allow the wife inside the home and locked the door. Hence the wife along the child left the house with her father. The husband fearing criminal action, through his sister's husband approached the local communist party person and negotiated not to take any action and the issue can be smoothly sorted out, hence no legal action was taken against the husband. But after that, the husband or his relatives did not take any effort to amicably set the issue. The next allegation on 20.02.07, the wife came to the husband's workplace and picked up quarrel is denied and the said fact is twisted. Infact the wife intended to live with the husband at Madurai and came to Madurai. Or else at least take the dress materials from the home since the wife and the child had left the house without any dresses. But the house was locked, hence the wife went to the husband's office requesting to give the house keys and when the husband refused to give the keys and insulted the wife and made the wife to run from pillar to post. Thereafter the husband had issued lawyer notice on 28.02.2007. The allegation the wife's brother with several persons had threatened the parents on 28.02.2007 with the dire consequences is false. It is not possible to receive the lawyer notice 28.02.2007 and on the same



day i.e. 28.02.2007 the brother of the wife had indulged any harassment against

the husband. Hence the allegation that the wife's brother insulted the parents of the husband is denied. Based on the dowry demand, complaint was preferred against the husband and the husband was summoned for enquiry. In order to conceal the dowry harassment, the legal notice for divorce was issued. Infact after the enquiry the complaint was closed since there is no truth in the said complaint.

In such circumstances, the husband contacted the communist party Ex-MLA and Advocate Mr Krishna for compromise. A compromise dated 05.03.2007 was arrived at the house of the said Krishna and both the parties have signed in the agreement, wherein it was agreed to withdraw the divorce petition, both would live together and the husband would not demand dowry. In spite of compromise the husband failed to take the wife and child, hence again on 03.04.2007 the wife's parents requested the husband's parents to take the wife and the child and to live amicably. But the husband failed to abide by the compromise and left and never returned back. When the wife's parents requested for amicable settlement, again the husband side demanded 25 lakhs and said if the said amount is paid then only both can live together. But the wife intended to live together, hence the wife filed petition for restitution of conjugal rights in H.M.O.P.No.183 of 2008 and also preferred a police complaint in Crime No.14 of 2007 for dowry harassment on the file of I Judicial Magistrate Court and the same is pending. The husband has filed false petition and there is no cause of action. The case for divorce is



filed, since the demanded dowry was not paid. The wife had tolerated the husband's torture and is seeking for restitution of conjugal rights and prayed to dismiss the divorce petition.

6. The wife had filed H.M.O.P.No.183 of 2008 for Restitution of Conjugal Rights petition and the husband had filed counter to the same and the same contents in the said petition and counter are more or less the same.

7. The husband had marked Ex.P1 to P48 and PW1 to PW4 had deposed on the side of the husband. The wife had marked Ex.R1 to R10 and RW1 and RW2 had deposed on the side of the wife. After considering the pleadings, evidence the divorce petition was dismissed and the restitution of conjugal rights was allowed. Aggrieved over the husband had filed HM.CMA No.2 of 2011 and HM.CMA No. 3 of 2011 and the same was dismissed. Aggrieved over the same, the present Civil Miscellaneous Second Appeals are filed and the following substantial questions of law are raised:

“a. When the respondent herself admitted that during the course of cross examination of RW1 she took "Sleeping pills" on the celebration of her daughter's first birthday and the appellant /husband has placed adequate material to show that the respondent /wife used to give repeated threats to commit suicide, it is just and proper for the 1st Appellate Court to confirming the trial court decree and judgment without considering the



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b. When the respondent had not discharged the burden of proof under Section 101 to 104 of the Indian Evidence Act 1872 had failed to prove the accusation of evidence, whether it amounts to cruelty to the appellant?

c. Whether decree of divorce can be granted to the appellant for the failure of the respondent to prove her contention and accusation in the statement of objections and oral evidence?

d. When the Hon'ble Apex Court taken a stand hat repeated threat to commit suicide amounts to cruelty when such a thing is repeated in form of sign or gesture, no spouse can live peacefully. In the above said circumstances were the trial court as well as the 1st Appellate Court were correct to turn down and refused to grant decree in favour of the appellant on the ground of cruelty?

e. When the respondent has made an attempt to attack the appellant in front of the officials during the course of working hours and the same was proved by evidence of PW 2 to 4. Was the learned Appellate Court is correct to refusing to grant decree in favour of the appellant and granting decree to the respondent on the ground that the respondent has not committed any cruelty to the appellant and she is always willing to join with the appellant?"

The following additional substantial question of law was also raised:

"Whether the Courts below have erred in not considering the relevant evidence available on record to grant divorce on the ground of cruelties to the appellant?"



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8. After perusing the records and hearing the rival submissions, this Court had given its anxious consideration. The husband has filed the petition for divorce under cruelty under section 13 (1) (ia) in HMOP No.178 of 2008 and fighting for divorce unsuccessfully for the past 17 years. The couples were married on 16.05.2004, the divorce petition was filed on 16.03.2007 and they had lived for three years and living separately for the past 17 years. The divorce petition is filed under cruelty and the word cruelty was not defined in the provisions of Hindu Marriage Act. But the Hon'ble Supreme Court in ***C.V.N. Kameshwar Rao vs G Jabilli*** reported in ***AIR 2002 SC 576*** had held that prior to the amendment in the year 1976 "cruelty" was one of the grounds for judicial separation under section 10 of the Act. Under the said section cruelty was given an extended meaning by using an objective phrase, viz "*as to cause reasonable apprehension in the mind of the petitioner that it will be harmful or injurious for the petitioner to live with the other party*". By the amendment of the Hindu Marriage Act, 1976 'cruelty' was made one of the grounds for divorce under section 13. Further held the acts committed by the spouse whether it amount to cruelty ought to be assessed based on the status of the parties in social life, their customs, traditions and other similar circumstances. In the present case, the Court ought to consider whether the conduct of the wife has become intolerable for the husband to suffer and no longer the husband can carry on such suffering and living together has become impossible. But this has to be judged not from a solitary incident, but on an



overall consideration of all relevant circumstances. Therefore, the Court proceeds to analyse the case based on the evidences marked by both the parties.

9. The primary allegation by the husband is that the wife had attempted to commit suicide and the same would amount to cruelty. The Learned Counsel appearing for the husband submitted that on 25.03.2006 the wife was admitted in Jipmer Hospital since she had attempted to commit suicide and Ex.P9 discharge summary is marked to prove the same. Even though the wife has denied in her counter, but had admitted in the petition filed for restitution of conjugal rights wherein the wife has stated in paragraph 8 as under:

*“Again, on 25.03.2006 for the celebration of birthday of their daughter Neha, both the family members were present respondent and his mother demanded of ?25 lakhs from the parents of the wife for getting post-graduation seat for the husband, when the parents of the wife rejected the demand, the husband and his mother Ponnuthai had illtreated the parents of the wife. The parents of the wife unable to bear the treatment and inhuman behaviour of the husband and his mother intended to leave the house. When the parents of the wife were about to get out of the house, in the presence of the parents of the wife, the husband beat the wife, the wife unable to bear the act of the husband. In the absence of her parents took sleeping dose and **made a suicide attempt**, then the matter was informed by the husband by the cell phone. The parents of the wife who were about to board a bus for Chennai and her second elder brother rushed to the house of the wife and found wife in unconscious stage where she was given*



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first aid and was taken to Jipmer Hospital Pondicherry by the parents and her brother and was given treatment and the wife was rescued. The husband has not taken the wife to hospital.”

10. When there was clear admission by the wife the attempt to suicide, then the same ought to be considered. But the Senior Learned Counsel appearing for the respondent / wife submitted that it is a single act. And single or single fight or trivial fights may be there in the martial life and the same cannot be considered as a ground for cruelty. However, the Learned Counsel appearing for the appellant / husband submitted that even though it is a single incident where it has ended in admission to the hospital, but there were repeated threats to commit suicide by the wife and the same ought to be considered. This Court is of the considered opinion that there is a difference in “attempting to commit suicide” and “repeated threat to commit suicide”. In the present case, Ex.P1, the discharge summary is proving the “attempt to commit suicide”. Generally, for threat to commit suicide, there may not be direct evidence but may be based on the conversation between the husband and wife and / or other circumstances of the case. In the present case, the husband’s father had deposed that the daughter-in-law had given repeated threats to commit suicide whenever the husband intends to see his family or speak to his family or anyway maintain connection with his family. Further in the present case the husband had written a letter to his mother complaining about the wife’s threat



of committing suicide and the said letter is marked as Ex.P32. On perusing the Ex.P32, it is seen that the husband has stated, the wife is threatening to commit suicide, threatening to prefer false dowry harassment case against the husband and his family members and he is tolerating her. The Courts below disbelieved the father's evidence, but this Court is of the considered opinion, even though the husband's father's evidence may be an interested witness, the same ought to be considered based on the circumstances of the case and the same cannot be simply brushed aside. The Courts below had disbelieved the Ex.P32 letter and stated writing letter is unbelievable in the mobile era. This Court is of the considered opinion that the letter was written on 21.02.2005, during 2005 the usage of mobile in villages was less. Further the letter is written in "inland" letter with postal stamping, hence there is no reason to disbelieve the same. The said letter was written on 21.02.2005 within eight months from the date of marriage i.e. 16.05.2004 and the letter clearly indicates the agony of the husband where it states the wife is threatening to commit suicide, hence the same cannot be brushed aside. Therefore, this Court is of the considered opinion that there is an element of mental cruelty.

11. It is seen that the wife had threatened to file dowry harassment case if her demands are fulfilled. Infact the wife had preferred police complaint for



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dowry harassment not only against husband but the entire family. In the present case the husband is the only son and he has three sisters. All the three sisters are married and are living separately along with their husbands. And the dowry harassment case was preferred against the parents, sisters and their husbands. The entire family had applied for anticipatory bail and was appearing before the police station for affixing signature, then they had filed relaxation petition, which is evident from Ex.P33 and 34. Further in four Tamil Daily Newspapers the news of dowry harassment case was published along with their names which are marked as Ex.P35 to 38, thereby the entire family reputation was tarnished. This action of the wife would definitely amount to cruelty. When the wife had preferred dowry harassment case against the married sisters and their husbands, then the same would conclusively prove there is mental cruelty against the husband.

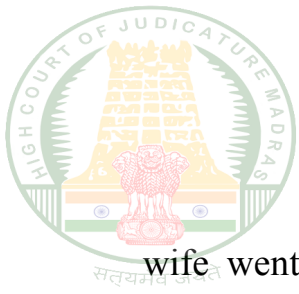
12. The wife had alleged that the husband had demanded dowry for purchasing the car. But the husband had proved that by availing loan from State Bank of India the car was purchased. The SBI sanction letter dated 04.06.2005 was marked as Ex.P13, wherein it states that to purchase Santro Xing XP car loan of Rs.3,36,000/- was sanctioned and the car was purchased on 06.06.2005 which is evident through Ex.P15. The husband had availed loan from GPF and the sanction letters was marked as Ex.P12 dated 25.05.2005 and Ex.P17 dated 26.04.2006. The husband had purchased house hold articles like television, its



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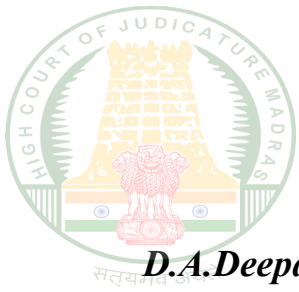
stand, almirah, steel almirah, teakwood cot and bed, micro-oven, fans, air conditioner (A/C), refrigerator during 2004, 2005 and 2006 and the purchase bills are marked as Ex.18 to 27, which would indicate as and when the loan was sanctioned in GPF the husband had purchased the articles. Therefore, the allegation that the husband demanded dowry for purchasing car and other articles is false. Further the wife was given dowry of house hold articles at the time of marriage is also false. The allegation that the husband demanded 25 lakhs as dowry for his higher studies, but the wife had not submitted an iota of evidence, hence the same is false. When the husband had purchased house hold articles through loan, then the allegation of demand of dowry of 25 lakhs is remote possibility. Repeatedly the Courts have held that the dowry harassment cases are used as a tool and false cases are filed. In the present case also, it is a false dowry harassment case. Therefore, this Court is of the considered opinion that the wife filed false dowry harassment case, but the same is used as tool by the wife to threaten the husband, which amounts to cruelty.

13. The next allegation that the wife had tarnished the image of the husband by visiting to his workplace and picked up quarrel. Even though the Learned Senior Counsel appearing for the wife tried to impress upon the Court that the husband had locked the house and in order to get the keys from the husband, the



wife went to workplace and unfortunately a wordy quarrel happened. Further

stated that when the husband was travelling and not available for a quite long time, his whereabouts are not known to the wife, husband refused to take the wife to the matrimonial home and left her in lurch, the anxiety of the wife ought to be taken into account. Further submitted that the deposition of PW2, 3 and 4, who had confirmed the quarrel, cannot be relied on since they are subordinates to the husband and they are self-serving witness. This Court is of the considered opinion even though the PW2, 3 and 4 are subordinates, the fact remains that the said incident happened and the fact is not denied by the wife. Further the visit of wife to the husband's workplace and a wordy quarrel itself would have affected the image of the husband at workplace. That too the husband is a doctor by profession and was holding a responsible post in ESI Corporation, in such circumstances the wife fighting with the husband in workplace would affect his image. For the sake of argument, even if the wife's contention is accepted that the wife was frustrated on the attitude of the husband, then the wife ought not to have shown the frustration in the workplace. A simple event of taking the keys had ended in wordy quarrel in the workplace of the husband would clearly indicate all is not well with them. All fights between husband and wife within the four walls may not affect the image of the husband and wife, but if it is in public or workplace the same would affect the image of the husband and wife and the same would definitely amount to cruelty. The Hon'ble Supreme Court in **Srinivas Rao Vs.**



D.A.Deepa reported in (2013) 5 SCC 226 had held if the adverse impact is on the job or business of the husband then the same can be a ground for divorce. The relevant portion is extracted hereunder:

*“16. Thus, to the instances illustrative of mental cruelty noted in **Samar Ghosh Vs. Jaya Ghosh** reported in (2007) 4 SCC 511, we could add a few more. Making unfounded indecent defamatory allegations against the spouse or his or her relatives in the pleadings, filing of complaints or issuing notices or news items which may have adverse impact on the business prospect or the job of the spouse and filing repeated false complaints and cases in the court against the spouse would, in the facts of a case, amount to causing mental cruelty to the other spouse.”*

14. Further the wife had stated in the counter that she is aware of the fact that the husband is in government service and hence she had not taken up her private practice and the private practice would affect his unblemished government service. But it is seen from the records that a Name Board was erected at the husband's house in Tirunelveli indicating that both the husband and wife are doing private practice and the clinic name is “Neha Clinic” and the photo of the board was marked as Ex.P30. After seeing the board immediately the husband had preferred complaint dated 20.02.2007 and 27.04.2007 against his wife to the higher authority, that his name is being misused and which is marked as Ex.P27, 28, and 29. This would clearly indicate that the wife had given all sort of



problems which would affect the carrier of the husband. As held in ***Srinivas Rao***

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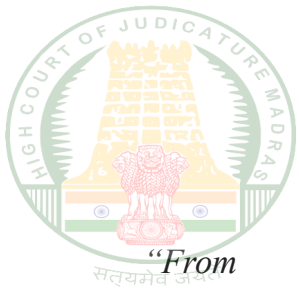
Vs. D.A.Deepa reported in (2013) 5 SCC 226, if the job of the spouse had adversely affected by the act of the act of the spouse, then the same would amount to cruelty. In the present case, the husband cannot do private practice since he is in government service, by erecting such name board the wife had adversely affected the job of the husband. By applying the above illustration to the present case, then the husband is entitled to divorce.

15. The next allegation is that on 28.02.2007 the husband had issued lawyer notice for divorce in Ex.P.8 and on the same day i.e. on 28.02.2007 the wife along with her brother and seven to eight persons had threatened the parents of the husband at Tirunelveli and the parents were forced to lock their home from inside. Thereafter the mother had preferred police complaint to Perumalpuram Police Station and All Women Police Station Palayamkottai which is marked as Ex.P1, 2 and 3. The husband had preferred complaint through telegrams on 01.03.2007 to various authorities like Director General of Police, Chennai, Commissioner of Police, Madurai, Commissioner of Police, Tirunelveli and Superintendent of Police, Dindigul stating his parents were illegally detained and kept them under house arrest by the wife's brother along with goondas and threatened they would not let the parents out until their son comes home or else to face the dire consequences. The said telegrams are marked as Ex.P4, 5, 6, and 7. These



complaints were not immediately acted on by the police. But when the wife had preferred dowry harassment case on 03.03.2007 (within three days from the date of divorce notice) and the Commissioner of Police, Tirunelveli had issued summons dated 05.03.2007 directing the husband to appear at 11.00 hours for enquiry marked as Ex.P26. It is pertinent to note that no action was taken for the complaint of the husband and his mother, but the wife's complaint was attended immediately. The sequence of the events would clearly indicate an undue threat to the husband with the influence of the police. This undue influence is because of the fact that the father and brother of the wife are advocates. Due to this undue influence the husband was forced to fight several layers. In other words, the husband was forcefully put in a Chakravayuh, which had added fuel to the already existing fight between the husband and wife.

16. Infact, after filing of divorce petition, the threat to the husband was continuing. The husband had submitted a complaint dated 22.06.2007 to various authorities alleging that the wife's brother along with some persons tried to kidnap the husband and the husband had also preferred criminal complaint through proper channel. The complaints preferred to various authorities are marked as Ex.P31. The said complaint is extracted hereunder:



“From
Dr.C.Thamilkumaran,
Medical Referee,
Sub-Regional Office,
ESI Corporation,
Madurai.

Madurai,
22.06.2007

To
The Superintendent of Police,
Dindigul

(Through proper channel)

Sub: Attempted kidnap of myself by Shri S. Sarvagan Prabhu and four others while I was on official duty.

Sir,

In order to examine the referral cases and other official work, I undertook a tour to the Branch Office, ESI Corporation, Dindigul. On 22.6.2007 I reached the Branch Office at 9.15 am today. I attended the official duty in the Branch Office and thereafter I boarded a Government Bus at 11.10 am from Dindigul Bus Stand to return to Madurai. Around 12.00 noon, I was waylaid by S. Sarvagan Prabhu, Advocate and four others and threatened with deadly weapons in the running bus itself. I immediately raised an alarm and the fellow passengers came to my help and, therefore, no physical harm could be done by the said gang. The driver and the conductor of the bus stopped the bus on the way and myself and the said Shri Sarvagan Prabhu were entrusted to the Highway Patrol police. The police took us to Ammayanaickanoor Police Station.

On the way to the Police Station, I telephoned to the Joint Director and informed the facts. The Inspector of Ammayanaickanoor Police Station orally enquired the case and allowed the undersigned to proceed to Madurai. The said Shri Sarvagan Prabhu and the gang of four left the police station just before that. The police station refused to accept my complaint.

As I was fearing for life, I remained, with the permission of the Inspector, inside the Police Station till some help was received from ESIC office. Shri M.Palaniappan, Branch Manager and Shri M.N. Ramasamy, Union Leader came in a car (No. TN 63 6243) and all the three came to Madurai and reached Sub Regional Office, Madurai at 2.30 pm.



WEB COPY

I have already intimated to my office the rowdyism indulged by my estranged wife Smt. Veda Gnanalakshmi, his elder brother Sarvagan Prabhu and other family members in collusion with rowdy elements on many occasions earlier. This is one such attempt on my life. Again I expect danger to my life in future also.

I request that the police may be asked to take appropriate action against the persons responsible for the attempted kidnapping today and also to take necessary action to protect my life in future.

/True Copy/

Attested

Sd/-18.6.2009

P.GANAPATHI SWAMY

JOINT DIRECTOR

SRO, ESIC, MADURA-20”

Yours faithfully,

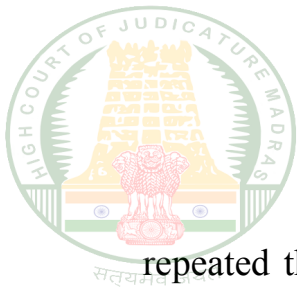
Sd/-

(Dr.C.THAMILKUMARAN)

MEDICAL REFEREE

17. However the Learned Senior Counsel appearing for the wife submitted that the criminal cases between the parties were compromised by the parties and the same cannot be cited after compromise. But the fact remains that the wife and her family had threatened and humiliated the husband and his family. Especially the aforesaid letter would clearly indicate that the husband was not allowed to carry on his Central Government Service and the husband was always under fear and was seeking the help of police or his office persons and others to escape from the threat given from the wife side.

18. Thus, when the wife had attempted to commit suicide, when there is



repeated threat to commit suicide, when the wife had visited the workplace and insulted the husband, when the husband was threatened by the wife's brother during his official duty, when the dowry harassment case was filed against the parents, sisters and their husbands and when the said dowry harassment case was published in the newspapers along with the names of the entire family, especially the name of the sisters and their husbands' names were published, then the same would amount to mental cruelty caused to the husband by the wife. The above narration of events would indicate that the husband is suffering in the hands of the wife and no longer the husband can carry on such suffering. The exhibits 1 to 48 marked on the side of husband would indicate the threat, humiliation, highhandedness of the wife and her relatives. In short, the husband had reached a stage that it will be harmful or injurious for him to live with his wife. Therefore this Court is of the considered opinion that the husband is entitled for the relief of divorce.

19. Further, in the present case the husband had stated right from the day of marriage the wife was fighting with him which is evident from his letter written to his mother. The parties had lived hardly for three years and not a single day was happy for the parties. The parties were estranged from 2007 onwards and for more than 17 years they are living separately. The breakdown of marriage has never been reconciled by the parties leading to the inference that it has reached beyond



return. The long, continued separation has made the martial bond an empty shell.

In such circumstances, divorce is the only relief as held in *Samar Ghosh Vs. Jaya Ghosh* reported in (2007) 4 SCC 511.

20. At this juncture, the Learned Senior Counsel appearing for the wife stated that if divorce is granted it would affect the parties since the parties are in their middle age. Especially the wife in her middle age ought to face the society with a stigma as divorced women and the same would affect the upbringing of their daughter. However, the said submission cannot be entertained in the present case, since the husband had already suffered in the hands of the wife and her family.

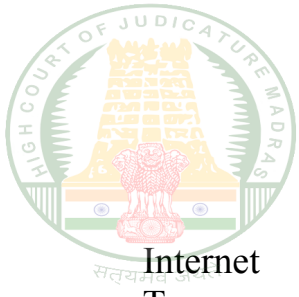
21. For the reasons stated supra, the substantial questions of law raised by the appellant / husband are answered in favour of the husband and the civil miscellaneous second appeals are allowed. The judgment and decree passed by both the Courts in both the cases are set aside. The marriage between the appellant / husband and respondent / wife is hereby dissolved. No costs.

23.09.2024

NCC : Yes / No

Index : Yes / No

<https://www.mhc.tn.gov.in/judis>



Internet : Yes / No

Tmg

To

WEB COPY

1. II Additional District Sessions Court,
Thoothukudi.
2. Subordinate Court, Thoothukudi.
3. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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VERDICTUM.IN



C.M.S.A.(MD)Nos.27 and 28 of 2015

S.SRIMATHY, J.

Tmg

C.M.S.A.(MD)Nos.27 and 28 of 2015

23.09.2024