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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.02.2025

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HON'BLE MS. JUSTICE R.POORNIMA**

C.M.A(MD)No.129 of 2019

~~Kxxxxxx~~
~~Kxxxxxx~~

...Appellant/Petitioner

.Vs.

~~Kxxxxxx~~
~~Kxxxxxx~~

... Respondent/Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act praying this Court to set aside the fair and decretal order made in H.M.O.P.No.270 of 2017, dated 10.8.2018, on the file of Family Court, Sivagangai.

For Appellant : Mr.P.Karthick

For Respondent : No appearance



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JUDGMENT

DR.G.JAYACHANDRAN,J.
AND
R.POORNIMA,J.

The appellant is the husband of the respondent, who sought for divorce before the Family Court, Sivagangai, had filed this appeal against the dismissal of his H.M.O.P.

2.Court notice received by the respondent, but she has not engaged a counsel. The learned counsel for the appellant produced the Marriage Certificate of the respondent indicating that she has married one ~~XXXXXXXXXX~~ on 27.01.2020 and the same got registered at Sub-Registrar Office, Coimbatore declaring her as his spouse.

3.Be that as it may, the facts of the case is that the appellant and the respondent got married on 25.4.2012. They were blessed with a male child. At the time of marriage, the appellant/husband was employed as a Police Constable at Thirupattur, Sivagangai District. The case of the appellant is that the respondent want to be with her sister at Coimbatore and pressurising him to get



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transfer to Coimbatore and when he refused to do so, a Police complaint against him was lodged causing mental cruelty to him. Realising that the matrimonial relationship would not survive, he sought for dissolution of marriage on the ground of cruelty. The Petition for divorce was contested by the respondent denying the allegations and also making counter allegations against the husband saying that he is having affair with a divorcee and leading an adulterous life.

4. Before the Trial Court, on the side of the appellant, two witnesses and 7 exhibits were marked. On the side of the respondent, two witnesses and three photographs with CD were marked as Ex.R1(series).

5. The trial Court framed the following issue for consideration:

1. Whether the appellant is entitled to get the relief of divorce on the ground of cruelty?

6. Appreciating the evidence, the Court below held that the allegations made by the appellant/Petitioner does not satisfy the definition of cruelty, the alleged pressure to get transfer from Thiruppathur to Coimbatore. According to



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the trial Court, it will not amount to the act of cruelty. The allegation of refusal to have cohabitation also disbelieved by the trial Court, taking note of the fact that the spouse has bequeathed a male child. Admittedly, after child birth, the spouses were living together for more than a year. Regarding false complaints to the Police, the trial Court concluded that giving complaint by itself will not amount to cruelty. Being aggrieved by the above said findings and dismissal of the divorce petition, the present appeal is filed.

7.The learned counsel for the appellant submitted that the respondent had deserted the husband and a young boy and living separately and was making various allegations including extra marital affair against the appellant. Wilful withdrawal from the matrimonial consortium and cohabitation though well found from the conduct of the respondent, the trial Court failed to take note of the said fact. The learned counsel for the appellant referring to Ex.P6-copy of the complaint given by the respondent addressed to the Chief Minister's Cell as well as to the Human Rights Commission, Director General of Police and Superintendent of Police, Sivagangai District, submitted that the tenor of the complaint and the complaint to the higher officials after instituting H.M.O.P for



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divorce would clearly show that the respondent by making false complaints been repeatedly causing mental cruelty. The learned counsel for the appellant also submitted that the respondent has admitted in her cross examination that Ex.P6 was sent by her and due to the false complaint given to the higher officials, the appellant had made an attempt to commit suicide, which ended in initiating departmental proceedings against him.

8.This Court, on a perusal of Ex.P6, Complaint admittedly sent by the respondent to the higher officials, we find that she has made wild allegations against him branding him as a terrorist and contact with foreign outfits. This complaint been given only after instituting the divorce petition. From the complaint, this Court also finds that the respondent has instituted Domestic Violence Complaint and it is pending. From the second complaint Ex.P7, this Court finds that the respondent has left the matrimonial home without any intimation and by way of informing the same, the respondent has made certain allegations against the appellant. Having made all those allegations against her husband including extra marital affair with a divorcee and suspected that he is having connection with terrorist group, cannot be ignored as an ordinary

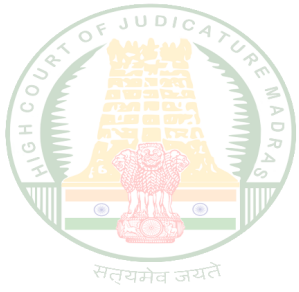


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complaint or genuine one. The said complaint against the appellant, who was in uniformed service, naturally would have caused several mental torture and cruelty which covers the definition of cruelty under the Act. This Court also taking note of the fact that the respondent had left the minor child, not taking care of him and the subsequent conduct would also indicate that she is not interested to save the marital relationship with the appellant. Taking note of the nature of the complaint by the respondent against the appellant which has been proved through Ex.P6 and Ex.P7, this Court finds that the appellant has been put to mental cruelty by the respondent, which has made the marital relationship unworkable.

9. For the reasons stated above, this Court finds that the trial Court has failed to appreciate Ex.P6 and Ex.P7 in a proper perspective and hence, the order passed by the trial Court has to be set aside and accordingly set aside. The Civil Miscellaneous Appeal is allowed and the marriage solemnized between the appellant and respondent on 25.4.2012 at Pattamangalam Village according to Hindu rites and customs is dissolved by a decree of divorce. There shall be no order as to costs.

[G.J.,J.] [R.P.,J.]
21.02.2025



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NCS : Yes/No

Index : Yes / No

Internet : Yes / No

vsn

To

The Judge,
Family Court,
Sivagangai.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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DR.G.JAYACHANDRAN, J.
and
R.POORNIMA,J.

vsn

JUDGMENT MADE IN
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