



CMA.(MD)No.74 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 10.02.2026

PRONOUNCED ON : 23.03.2026

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

AND

THE HONOURABLE MS.JUSTICE R.POORNIMA

C.M.A.(MD)No.74 of 2021

██████████

... Appellant

Vs.

██████████

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 19(1) of Family Courts Act, against the judgement and decree dated 21.10.2010 passed in H.M.O.P.No.20 of 2020 on the file learned Family Court, Thoothukudi, Thoothukudi District and pass such further or other orders.

For Appellant : Mr.S.Sharma
for Mr.K.Veilmuthu

For Respondent : Mr.S.Sathish Kumar



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JUDGMENT

(Judgment of this Court was delivered by R.POORNIMA, J.)

The appellant / Petitioner has filed this Civil Miscellaneous Appeal against the order dated 21.10.2020 passed in H.M.O.P.No.20 of 2020 by the Family Court, Thoothukudi, wherein, petition filed under Section 13(1)(i-a) of Hindu Marriage Act, seeking divorce was dismissed.

2. The brief facts of the case as follows:

(a) The marriage between the appellant and the respondent was solemnized on 11.06.2000 at Thoothukudi, at Mano Wedding Hall, in accordance with Hindu rites and customs. The appellant is a B.E. Mechanical Engineering graduate and was engaged in private undertaking works. Out of the wedlock, the parties were blessed with two female children, namely Divyadharshini and Deivadharshini, who were born on 25.12.2002.

(b) During the year 2007, the appellant secured an employment opportunity at Hyderabad. Thereafter, the appellant and the respondent lived together in a rented house at Hyderabad and initially led their matrimonial life peacefully. However, after some time, the



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respondent started creating problems with the appellant whenever he returned from work. She allegedly damaged household articles and behaved in an abnormal and aggressive manner. The respondent also developed a habit of threatening the appellant that she would commit suicide, and on several occasions she attempted to commit suicide by consuming sleeping pills.

(c) Further, the respondent frequently suspected the character of the appellant. Due to the conduct of the respondent, the appellant was subjected to severe mental agony. At one point of time, the appellant also suffered from a cardiac ailment and underwent treatment from the year 2012 to 2014. Subsequently, the appellant noticed certain changes in the attitude and behaviour of the respondent. The respondent deserted the appellant and the children and developed an illicit intimacy with one Ramesh who is running a photo studio in the locality. She sold her jewels and spend the money lavishly with the said Ramesh. On 08.06.2014 at about 01.05, the respondent kept the children in a room and locked and was in the company of the Ramesh, at that time the appellant came to the house and seeing him, he escaped from the backside of the house.

(d) Due to the above conduct of the respondent, the appellant suffered severe mental agony. The respondent also had a habit of sending



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threatening messages to the appellant. She failed to properly maintain and take care of the children. Therefore, the appellant resigned from his job in the year 2015 and started living with his two daughters at Thoothukudi. At present, the children are under the care and custody of the appellant.

(e) On 15.05.2015, the appellant lodged a complaint against the respondent at Kolkonda Police Station. Thereafter, on 20.05.2015, the appellant issued a legal notice to the respondent seeking divorce. The respondent sent a reply notice on 28.05.2015 containing false allegations against the appellant. Hence, the appellant filed a petition for divorce on the ground of cruelty.

3. The respondent denied the allegations made by the appellant. According to the respondent, due to excessive consumption of alcohol, the appellant suffered a blockage in his heart. She contended that it was the respondent who admitted the appellant to the hospital in the year 2012 and took care of his health. The respondent further stated that she always took care of the children and showed love and affection towards them.

3.1. The respondent alleged that the appellant is a habitual drunkard and that he failed to take care of the respondent and the



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children and did not go for any employment. According to the respondent, while she was pursuing her studies through distance education and had gone to write her examination, the appellant took the children away.

3.2. The respondent further stated that the complaint lodged by the appellant before Kolkonda Police Station was enquired into and the same was closed. She alleged that it was the appellant who subjected her to cruelty, but she tolerated the same for the sake of the future of the children.

3.3. It is further stated that during the year 2016, during the quarterly examination holidays, the appellant took the children and left them at his sister's house in Hyderabad and thereafter came to Thoothukudi. The appellant and the respondent lived together at Thoothukudi as husband and wife for about four or five days. Therefore, the respondent prayed that the petition is devoid of merits and is liable to be dismissed.

1. During the course of trial on the side of the appellant/petitioner examined P.W.1 was examined and marked Exs.P1 to P10 and on the side of respondent, R.W.1 was examined and marked Ex.R1.

2.



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5. After examining the witnesses and analysing the documentary evidence, the Trial Court disbelieved the allegation made by the appellant and held that the appellant had failed to prove the allegation of adultery against the respondent. The Trial Court further took into consideration the fact that, during the pendency of the divorce petition, the appellant and the respondent lived together as husband and wife for a few days, thereby condoning the alleged acts of cruelty. On such findings, the Trial Court dismissed the divorce petition.

6. Aggrieved by the said order, the appellant has filed the present Civil Miscellaneous Appeal on the following, among other, grounds.

(a) The Trial Court failed to consider that the appellant had established that he was put to persistent harassment and cruelty by the respondent which resulted in his heart ailment, which was also admitted by the respondent in her evidence. The appellant condoned the acts of the respondent is nothing but *per se* illegal and erroneous.

(b) The trial Court failed to consider the fact that the respondent is having illegal intimacy with one Ramesh which also amounts to cruelty. Subsequent understanding/meeting by the appellant with the respondent



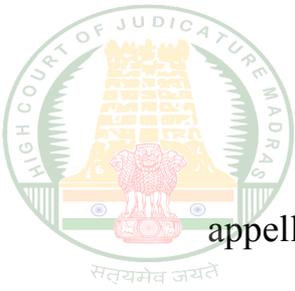
cannot be construed as to the condoning of the acts of adultery.

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(c) The trial Court failed to see that the marriage has been irretrievable broken down which could be clearly inferred from the facts and circumstances of the case. The trial court has not examined the entire evidence adduced in the present case and had chosen to discard and overlook the material evidence.

(d) The trial Court without appreciating the evidence rendered by the appellant and dismissed the petition which is not proper and liable to be dismissed and the appellant prayed to allow the present appeal and set aside the order of the trial Court.

7. The learned counsel appearing for the respondent would submit that the appellant has failed to prove the allegation of cruelty against the respondent. On the contrary, it is contended that the appellant himself committed acts of cruelty against the respondent and had received money from her. It is further submitted that even after filing of the divorce petition, both the parties lived together, which, according to the respondent, is evidenced by Ex.R1. The appellant has also failed to prove the allegation of adultery. Therefore, the learned counsel would contend that the trial Court has rightly dismissed the petition. It is further submitted that even as on date the respondent is willing to live with the



appellant and therefore the present appeal is liable to be dismissed.

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8. Heard the learned counsel appearing on either side and perused the materials available on record.

9. The relationship between the parties and the fact that two children were born out of their wedlock are not in dispute. Though the appellant raised allegations of adultery against the respondent, he has failed to implead the alleged adulterer as a party to the proceedings. The learned counsel for the appellant fairly submitted that the adulterer was not made a party; however, the appellant seeks dissolution of marriage primarily on the ground of cruelty committed by the respondent.

10. The appellant relied upon Ex.P3 and Ex.P4, namely the complaint lodged before the Kolkonda Police Station dated 15.05.2015 alleging that the respondent had an illicit relationship with one Ramesh. However, the appellant has not filed any enquiry report pertaining to the said complaint. The appellant has also produced Ex.P5, which consists of certain messages allegedly sent by the respondent to his mobile phone. However, the appellant has not produced the original phone to substantiate the said messages.



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11. The respondent admitted that the appellant had been suffering from a cardiac ailment and was undergoing treatment during the year 2014. Though she alleged that the appellant harassed her, she has not produced any documentary evidence in support of the same. She further alleged that the appellant had illicit relationships with several women. Subsequently, after the filing of the divorce petition, the respondent filed D.V.C.No.10 of 2015 making allegations of harassment and dowry demand against the appellant and his parents.

12. The respondent further contended that the appellant had condoned the alleged acts and that they lived together while the petition was pending. However, the appellant stated that he stayed with the respondent only for a single day. Though the respondent produced certain photographs, no negatives or other supporting evidence were produced to prove that the appellant continuously lived with her for four days.

13. It is also seen that the respondent filed the domestic violence complaint only after the appellant filed the divorce petition, raising serious allegations that the appellant was a drunkard, unemployed, demanded money, attempted to kill her, and maintained



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illicit relationships with several women, besides making allegations against his aged parents. The said domestic violence case was subsequently dismissed in the year 2016.

14. While the respondent made several serious allegations in the domestic violence petition, she now claims that she is willing to live with the appellant, which appears to be exaggerated. Further, the children of the parties appeared before this Court through Video Conferencing and stated that they have been living with their father continuously from the year 2015 and that the respondent has not been living with them or taking care of them. The children, who are now grown up, supported the case of the appellant that the respondent has been living separately for a long period.

15. The trial Court dismissed the divorce petition mainly on the ground that the appellant had condoned the alleged cruelty and that the parties lived together thereafter. However, the trial Court failed to take into consideration the subsequent conduct of the respondent, particularly the filing of the domestic violence case containing serious allegations against the appellant and his family members after the filing of the divorce petition.



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16. Even according to the respondent, though the appellant allegedly condoned the cruelty and lived with her, the respondent did not withdraw the domestic violence petition and the same was ultimately dismissed on merits. Therefore, the ground on which the trial Court dismissed the divorce petition does not appear to be proper.

17. On the other hand, the appellant has established that he suffered cruelty at the hands of the respondent. The respondent neglected the appellant, lived separately without taking care of the children, and initiated criminal proceedings containing grave allegations against him and his family members. Due to the mental stress caused by the said circumstances, the appellant was also admitted to hospital for treatment relating to his heart ailment. Though the respondent alleged that the appellant was admitted to hospital due to excessive alcohol consumption, no document has been produced to substantiate the said claim.

18. In view of the above circumstances, this Court is inclined to allow the present Civil Miscellaneous Appeal. Accordingly, this Civil Miscellaneous Appeal is allowed and the order of the trial Court dated 21.10.2020 passed in H.M.O.P.No.20 of 2020 on the file of

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the Family Court, Thoothukudi, is set aside. Consequently, the marriage

between the appellant and the respondent is hereby dissolved.

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(G.K.I,J) & (R.P,J)
23.03.2026

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

Gvn

To

1. The Family Court, Thoothukudi.

Copy to

1.The Section Officer,
ER/VR Section,
Madurai Bench of Madras High Court,
Madurai.



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