

C.M.A(MD)No.494 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED :11.09.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)Nos.65 & 66 of 2024

~~Kalasey~~

... Appellant in both cases

Vs.

~~A.S.Sivakumar~~

... Respondent in both cases

COMMON PRAYER: Civil Miscellaneous Appeal has been filed under Section 19(1) of Family Courts Act (66 of 1984) to set aside the order dated 29.12.2021 made in H.M.O.P.Nos.370 of 2014 and 605 of 2015, on the file of the Family Court, Madurai.

For Appellant : Mr.T.K.Gopalan
in both cases

For Respondent : Mr.J.Bharathan
in both cases



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COMMON JUDGMENT

[Judgment of the Court was made by
MR.K.K.RAMAKRISHNAN.J.]

Both Civil Miscellaneous Appeals have been filed by the appellant/wife as against the fair and decretal orders made in H.M.O.P.No.370 of 2014 dated 29.12.2021 and H.M.O.P.No.605 of 2015 dated 29.12.2021 on the file of the Family Court, Madurai.

The appellant is the wife and the respondent is the husband. For the sake of convenience, the parties are referred to as 'husband' and 'wife'.

2. The case of the husband:

2.1.The marriage between the appellant and the respondent took place on 01.02.2009. Out of the marriage, a female child was born. After that there was some dispute between both parties and the same reached to the extent of the attacking the respondent. The conduct of the appellant is disagreeable. Also she frequently threatened the respondent that she would commit suicide and thereby instilling a fear in the mind of the respondent that he would be put in jail. Further, she was not taking care of her own child and also causing disturbance in her studies by interfering in



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her studies in the school by talking disrespectfully with the teachers and not maintaining good relationship with the teachers. Hence the study of the appellant's daughter got affected. Apart from that, the appellant frequently took money from the family of the husband and gave it to her family without the knowledge of the husband. Further it is alleged that the appellant persistently demanded partition of the property from respondent's father and separation of the property so as to leave it with her. With this controversy, the appellant had left the matrimonial home and started living separately. After that the respondent apprehended fear for his life at the instance of the appellant, his brother-in-law and the mother-in-law and her family members. Hence without any possibility for reunion, he filed the divorce petition before the jurisdiction family Court on 30.05.2015.

2.2.The case of the wife:

The wife filed counter statement in H.M.O.P.No.370 of 2014 stating that at the time of marriage her parents had given 30 sovereigns of gold jewels and Rs.4,00,000/- worth silver articles. The husband is running a cement and building material wholesale business and a

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fertilizer shop. He is owning a shopping complex. He is owning a lorry

and he is getting a sum of Rs.1,50,000/- per month. The allegation that

she frequently harassed the husband, that she was not taking care of the

child and beating the child are, false. It is false to state that she threatened

to commit suicide by trying to self immolate using kerosene and that she

was admitted in hospital. She denied the entire averments that her

husband gave Rs.30,000/- to her aunt and a sum of Rs.2,00,000/-

to her father. Her father died on 24.10.2012 and after death of her father,

she demanded jewels from the family of the husband. Hence, the

husband returned 4 sovereigns of gold. Since, the financial condition of

her family worsened due to the death of her father, a family property was

sold in order to settle the marriage loan. Thereafter, on 25.05.2014, the

husband and his family members demanded more dowry and started to

beat her indiscriminately and she was forced out of the matrimonial

house. Therefore, she lodged a complaint with All Women Police Station,

Thirupparankundram. Only after she approached the Court below, that

FIR was registered on 23.07.2014. After coming to know about the

complaint, her husband filed H.M.O.P.No.370 of 2014 for divorce.

Therefore, she filed H.M.O.P.No.605 of 2015 for restitution of conjugal



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rights. Hence, she seeks for dismissal of the divorce petition and prayed to allow this petition.

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2.3.Subsequent events that happened during the H.M.O.P.,

proceedings:

During the pendency of the above divorce proceedings and the petition for restitution of conjugal rights, the criminal case preferred by the wife was investigated by the jurisdiction police and the same culminated in filing of the final report. It was taken on file in C.C.No.252 of 2016. In the mean time, the appellant's brothers vented out their anger by assaulting the respondent and his family members and the same further went to the level of the murdering the respondent's father. That is on that date, the petitioner, the appellant's brothers and other persons unlawfully assembled with deadly weapons and committed murderous assault upon the respondent's father and he died on the spot. In the said incident, the respondent and his mother also sustained injury. In the said case, FIR was registered and subsequently the involvement of the appellant also came to the knowledge of the investigating agency and hence she was also added as an accused in the said case registered under Section 302 of IPC etc.

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3. Before the trial Court, on behalf of the husband, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P.8 were marked. On behalf of the wife, the wife was examined as R.W.1. and Ex.R.1 was marked.

4. The learned trial judge considered all the evidence and also the material documents and considering the subsequent events that took place during the pendency of the above matrimonial proceedings, allowed the divorce petition filed by the respondent husband and dismissed the petition filed by the wife for restitution of the conjugal rights. Challenging the same, the wife filed these Civil Miscellaneous Appeal before this Court.

5. The learned counsel for the appellant made the following submissions:

(i) The Court below committed error in taking into consideration the subsequent events which is not permissible under the law.

(ii) Further, the consideration of the acquittal judgment passed in C.C.No.252 of 2016 under Ex.P4 and the filing of the alteration report and the FIR relating to the murder of the respondent's father and injury



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caused to the respondent and his mother is no way related to this case and the same was erroneously taken into consideration while granting divorce filed by the husband and also the dismissal of the restitution of conjugal rights. The Court below has not seen the *bonafide* offer made by the appellant and dismissed the restitution petition and allowed divorce proceedings.

(iii)The learned trial judge was not right in stating that the wife committed cruelty to the husband by making false allegation in the C.C.No.252 of 2016 and also the murder of the father of the respondent. The learned counsel further submitted that this was in allegation stage and there was no materials produced before the Court for the involvement of the wife in the above murder case and hence taking the consideration of the above events, she seeks for the dismissal of the divorce petition filed by the husband and allow the restitution of conjugal rights by allowing these C.M.As, by setting aside the impugned order passed by the Court below.

6.The learned counsel for the respondent made the following submissions:

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(I) In the counter affidavit filed by the wife, it was clearly stated that she made a complaint before the Tiruparankundram All Women Police Station. In the counter affidavit, she specifically stated that the respondent committed cruelty and also made a dowry demand.

(ii) In the said circumstances, the said registration of the case and acquittal in C.C.No.252 of 2016 was not a subsequent event. The same was pleaded by the respondent and the family Court has jurisdiction to consider the allegation made by the appellant against the respondent alleging the demand of dowry and cruelty caused to her. Hence, the submission of the learned counsel for the appellant is not legally correct.

(iii) He would further submit that in the matrimonial proceedings, events taken during the course of the proceedings can be considered to show that there is no possibility of re-union and also the cruelty caused against the husband and his family members.

(iv) During the pendency, any events that have taken place, which causes impediment to the peaceful matrimonial life can be considered. In this case, it is the appellant's brothers and family members who are said to have committed murder of the respondent's father. As per allegation, the motive behind the said murder is the pendency of multiple litigations.



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(v) Even the allegation in the divorce petition is that she demanded partition of the properties from the father of the husband. Further, in the pleadings also it is stated that there was a plot to commit the murder of the respondent. Hence, he seeks for dismissal of both cases.

(vi) He would further submit that in this case, number of complaints made by both the parties due to the intervention of the in-laws of the respondent in the matrimonial life, ultimately led to number of criminal prosecutions.

(vii) In the said circumstances, the learned trial judge correctly considered that there was no *bonafide* offer on the part of the wife and hence he dismissed the restitution petition and allowed the divorce on the ground that there was no possibility of reunion for peaceful living. The learned trial judge also considered the judgment of the Hon'ble Supreme Court where subsequent events were also taken into consideration while deciding the matrimonial discord.

(viii) Further the Learned trial judge also rightly relied on number of judgments of the Hon'ble Supreme Court to prove that the initiation of the criminal proceedings without any truth in the allegation amounts to cruelty to the husband.



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(ix) In the said circumstances, the well-considered judgment of the learned trial judge has to be confirmed that there is no ground to interfere in the well-considered judgment of the learned trial judge.

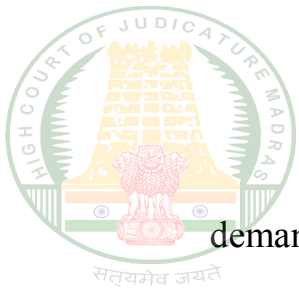
7. This Court considered the rival submission and also perused the records and the impugned judgment passed by the learned trial Judge.

8. Whether the Court below is correct in dismissing the petition filed by the appellant for restitution of conjugal rights?

8.1. Whether the Court below is correct in allowing the petition filed by the respondent for divorce?

9. From the records it is clear that the marriage between the appellant and the respondent had taken place on 01.02.2009 and female child was born on 20.09.2010. After the marriage, the appellant and respondent were living separately. The appellant was working in her father's shop as a labour. *“The appellant/wife demanded the property of the father of the husband and hence the relationship between the appellant and respondent was strained”*. The appellant had persistently

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demanded the respondent to get the property of his father and periodically threatened the respondent that she would commit suicide and thereby instilled a fear in his mind that she would put him in jail and due to this dispute, there was matrimonial discord between the appellant and the respondent. Finally, the appellant separated the company of the respondent and lived separately. Therefore, the respondent has filed the petition in H.M.O.P.No.370 of 2014 seeking divorce.

10. She lodged a complaint with the false allegation against the in-laws and the respondent after filing the divorce petition. Before filing the divorce petition, she did not make any complaint before any police station. The respondent filed the divorce petition on 30.05.2015. Thereafter, she filed the criminal complaint before the jurisdictional police stating that the respondent and his family member caused cruelty and harassment. In the said complaint, it is stated that on 25.05 2014 at about 10.30 a.m. the family members of the respondent assaulted the appellant with broom stick. The said event, was not only false, it also shows the attitude of the appellant in making such a false allegation as if the family members of the respondent assaulted her with a broomstick in

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the public place which is to be viewed seriously. In the State of Tamilnadu attacking with the broomstick is considered ignominious affecting the parties' prestige. Further attacking the daughter-in-law in the public place with the broomstick is a serious allegation. The said allegation was found to be false by the learned trial judge. Hence, as rightly pointed out by the learned trial Judge making the false accusation against the husband namely the respondent and his family members amounted to causing cruelty and the same is fortified by the following judgment of the Hon'ble supreme Courts

10.1. In the case of G.V.N. Kameswara Rao v. G. Jabilli, reported in (2002) 2 SCC 296

16.... The mental cruelty faced by the appellant is to be assessed having regard to his status in life, his educational background, and the environment in which he lived. The appellant could have suffered traumatic experience because of the police complaint and the consequent loss of reputation and prestige in the society. Married life of the appellant with the respondent had never been happy. The appellant would say that from 1985 onwards, he has not been having conjugal relationship with the respondent and even



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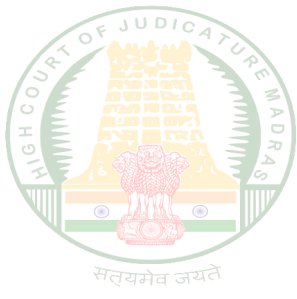


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prior thereto the respondent was not properly discharging her marital obligations.

*10.2. In the case of **Raj Talreja v. Kavita Talreja**, reported in (2017) 14 SCC 194 at page 198*

11. Cruelty can never be defined with exactitude. What is cruelty will depend upon the facts and circumstances of each case. In the present case, from the facts narrated above, it is apparent that the wife made reckless, defamatory and false accusations against her husband, his family members and colleagues, which would definitely have the effect of lowering his reputation in the eyes of his peers. Mere filing of complaints is not cruelty, if there are justifiable reasons to file the complaints. Merely because no action is taken on the complaint or after trial the accused is acquitted may not be a ground to treat such accusations of the wife as cruelty within the meaning of the Hindu Marriage Act, 1955 (for short “the Act”). However, if it is found that the allegations are patently false, then there can be no manner of doubt that the said conduct of a spouse levelling false accusations against the other spouse would be an act of cruelty. In the present case, all the allegations were found to be false. Later, she filed another complaint alleging that her husband along with some other persons had



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trespassed into her house and assaulted her. The police found, on investigation, that not only was the complaint false but also the injuries were self-inflicted by the wife. Thereafter, proceedings were launched against the wife under Section 182 IPC.

**10.3.R. Raghunandhan v. M. Revathi, 2012
SCC OnLine Mad 1816 at page 783**

41. If the facts of this case and the findings recorded by us as above are considered in the backdrop of the aforesaid legal principles, the act of the Respondent in making false allegations against the Appellant and his family members, which are unsubstantiated and the act of the Respondent in lodging the Complaint after Complaint against the Appellant and his family members and forcing them to approach this Court seeking anticipatory bail and as a result they had to comply with the onerous conditions imposed by this Court would definitely amount to “mental cruelty”. If really, the Respondent was or is really interested in living with the Appellant as claimed by her, she would not have acted as above and definitely she would not have lodged three Complaints even after the dismissal of the divorce Petition and during the pendency of the above Appeal. Therefore, the aforesaid acts of the



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Respondent clearly establishes the hollowness of her claim that she wants to live with the Appellant.

*In the case of **K. Srinivas Rao v. D.A. Deepa, (2013) 5 SCC 226 at page 234***

16. Thus, to the instances illustrative of mental cruelty noted in Samar Ghosh [(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.

*10.4. In the case of **Sivasankaran v. Santhimeenal, (2022) 15 SCC 742 748***

12. A marriage is more than a seemingly simple union between two individuals. As a social institution, all marriages have legal, economic, cultural, and religious ramifications. The norms of a marriage and the varying degrees of legitimacy it may acquire are dictated by factors such as marriage and divorce laws, prevailing social norms, and religious dictates. Functionally, marriages are seen as a site for the



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propagation of social and cultural capital as they help in identifying kinship ties, regulating sexual behaviour, and consolidating property and social prestige. Families are arranged on the idea of a mutual expectation of support and amity which is meant to be experienced and acknowledged amongst its members. Once this amity breaks apart, the results can be highly devastating and stigmatising. The primary effects of such breakdown are felt especially by women, who may find it hard to guarantee the same degree of social adjustment and support that they enjoyed while they were married.

25. In view of the legal position which we have referred to aforesaid, these continuing acts of the respondent would amount to cruelty even if the same had not arisen as a cause prior to the institution of the petition, as was found by the trial Court. This conduct shows disintegration of marital unity and thus disintegration of the marriage. [A. Jayachandra v. Aneel Kaur, (2005) 2 SCC 22] In fact, there was no initial integration itself which would allow disintegration afterwards. The fact that there have been continued allegations and litigative proceedings and that can amount to cruelty is an aspect taken note of by this Court. [Malathi Ravi v. B.V. Ravi, (2014) 7 SCC 640 : (2014) 3 SCC



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(Civ) 774] *The marriage having not taken off from its inception and 5 years having been spent in the trial Court, it is difficult to accept that the marriage soon after the decree of divorce, within 6 days, albeit 6 years after the initial inception of marriage, amounts to conduct which can be held against the appellant.*

10.5.In the case of Shobha Rani v. Madhukar Reddi, (1988) 1 SCC 105 at page 108

5. It will be necessary to bear in mind that there has been a marked change in the life around us. In matrimonial duties and responsibilities in particular, we find a sea change. They are of varying degrees from house to house or person to person. Therefore, when a spouse makes 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 accustomed to or their economic and social conditions. It may also depend upon their culture and human values to which they attach importance. We, the judges and lawyers, therefore, should not import our own notions of life. We may not go in parallel with them. There may be a generation gap between us and the parties. It would be better if we



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keep aside our customs and manners. It would be also better if we less depend upon precedents. Because as Lord Denning said in Sheldon v. Sheldon [(1966) 2 All ER 257, 259] “the categories of cruelty are not closed”. 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.

11.From the reading of the above precedents, it is clear that making false allegation against the respondent is one thing and establishing the same by the husband as a false one is another thing. Making the allegation against the husband is not a ground to be treated as a cruelty. But the same has been established as false one and the impact of the allegation against the in-laws and the husband is treated differently ie., the same is viewed as cruelty against the husband. Whenever making a false allegation against the in-laws, the prejudice caused and prolonged



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suffering of the family members of the husband is to be taken into account. Apart from that, the appellant nowhere stated in earlier proceedings that she was harassed by her husband demanding dowry. More over, the appellant made the allegations against the husband not only in the said case, but even after the case ended in acquittal, subsequent complaint was also made against the respondent's family members and number of criminal cases were also pending between them. In the said circumstances, finally the appellant and her brother and other relatives conspired together in order to settle a score and murdered the father-in-law. In the said circumstances, it amounts to cruelty on the part of the wife and hence, this Court is inclined to accept the finding of the learned trial Judge that every action of the appellant amounts to cruelty. In the said circumstances, as held by the Hon'ble Supreme Court in this case making false allegation that the husband committed cruelty and demanded dowry amounts to cruelty.

12.The learned counsel submitted that the trial Court has no jurisdiction to consider the subsequent events in the pending proceedings, but the said argument is contra to the settled principle of the following

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judgements of the Hon'ble Supreme Court:

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OnLine SC 1523 at page 32

16. The matter can be looked at from another angle. If acts subsequent to the filing of the divorce petition can be looked into to infer condonation of the aberrations, acts subsequent to the filing of the petition can be taken note of to show a pattern in the behaviour and conduct. In the instant case, after filing of the divorce petition a suit for injunction was filed, and the respondent went to the extent of seeking detention of the appellant. She filed a petition for maintenance which was also dismissed. Several caveat petitions were lodged and as noted above, with wrong address. The respondent in her evidence clearly accepted that she intended to proceed with the execution proceedings, and prayer for arrest till the divorce case was finalised. When the respondent gives priority to her profession over her husband's freedom it points unerringly at disharmony, diffusion and disintegration of marital unity, from which the Court can deduce about irretrievable breaking of marriage.

12.2. In the case of *Mangayakarasi v. M. Yuvaraj*, reported in



(2020) 3 SCC 786:

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14. It cannot be in doubt that in an appropriate case the unsubstantiated allegation of dowry demand or such other allegation has been made and the husband and his family members are exposed to criminal litigation and ultimately if it is found that such allegation is unwarranted and without basis and if that act of the wife itself forms the basis for the husband to allege that mental cruelty has been inflicted on him, certainly, in such circumstance, if a petition for dissolution of marriage is filed on that ground and evidence is tendered before the original Court to allege mental cruelty it could well be appreciated for the purpose of dissolving the marriage on that ground. However, in the present facts as already indicated, the situation is not so. Though a criminal complaint had been lodged by the wife and husband has been acquitted in the said proceedings the basis on which the husband had approached the trial Court is not of alleging mental cruelty in that regard but with regard to her intemperate behaviour regarding which both the Courts below on appreciation of the evidence



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had arrived at the conclusion that the same was not proved. In that background, if the judgment [M.Yuvaraj v. Mangayarkarasi, 2018 SCC OnLine Mad 13523] of the High Court is taken into consideration, we are of the opinion that the High Court was not justified in its conclusion.

The Hon'ble Supreme Court, in the above cases said that the subsequent events are also to be taken into consideration either to grant or dismiss the matrimonial relief claimed by the parties. In the said circumstances, in the primary pleadings in the counter affidavit of the appellant it is claimed that the appellant made a complaint against the respondent and his family members under Section 498 A IPC etc. The said complaint culminated in filing of a final report and was taken on file in C.C.No.252 of 2016. The said case ended in acquittal by the competent criminal Court as seen from Ex.P4. In the said circumstances, it cannot be termed as subsequent event and the Court had only considered the events pleaded in her counter. Therefore, the argument of the learned counsel for the appellant that the Court has no jurisdiction to look into the subsequent event is rejected.

13. When the murder of the respondent's father had taken place, in



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the said incident, the respondent and his mother have also sustained injury, it is the right of the husband to demonstrate the unfortunate circumstances which do not pave way for any reunion.

13.1.The initial minor matrimonial discord has widened into major cracks which could not fixed together because of initiation of number of complaints and finally the alleged murder of the respondent's father has taken place in his presence after attacking him and his mother. A number of criminal proceedings were initiated by both the parties. The conduct of the wife making false allegations against the husband and his family members is a brash act. Even after making uncountable allegations against the in-laws and the respondent, the filing of petition for restitution of conjugal rights after the number of years, in the considered opinion of this Court, is not a bona fide one. It is relevant to refer from Halbury's Law of England, meaning to “offer of return”.

“The offer must be genuine, that is it must be made in good faith in the sense that it is an offer to return permanently which, if accepted, will be implemented, and is an offer containing as assurance to terminate the conduct, if any, that



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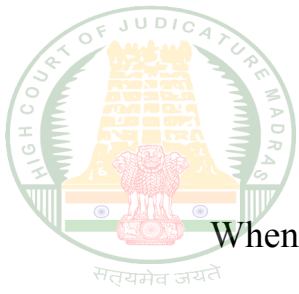


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caused the separation. An offer must likewise be made in good faith where the parties separated consensually” and also it is relevant to refer the judgment of the house of lords in W. v. W.(No.2), (1954) 2 All E.R.829 for the proposition that whether the offer for re-union is genuine, has to be decided bearing in mind the background of the case.

13.2.From the above judgments and observations, the alleged offer by the wife to come and live with the husband is not genuine and hence, it has to be held that it is not *bonafide*. The reliance placed on the incident of murder of the respondent's father is important factor to appreciate the feasibility of a happy matrimonial life. In the said circumstances, alteration report in the said murder case was marked. The allegation that the father of the respondent was murdered and the respondent also sustained injuries and his mother also sustained injuries, is to be taken into consideration. There was no bar to consider the same, in view of the law laid down by the Hon'ble Supreme Court.

13.3. Matrimonial peace is the pillar of the matrimonial home.



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When the said pillar broke down into irreparable debris, the husband cannot be asked to continue to live with her. When there is allegation of the intentional murder of the father of husband under his nose and during the intervention, he and his mother also sustained grievous injuries, it would be a inhuman approach to ask him to forget the past as a bad dream and to live with her and to keep a conducive matrimonial home. Only the wearer knows when the shoe pinches. Not only was there omission on the part of the wife to maintain matrimonial peace, there was a total failure on the part of the wife to make *bona fide* offer to re-unite the broken matrimonial home. Instead of pasting the cracked wall, she had demolished the foundation by making the complaint after complaint and finally, facing allegation of attacking the husband after murdering the father-in-law.

14. From the records, this Court finds no conduct, action, activity of the husband that caused such indifference and frigidity towards the wife, denial of the company to her, hatred and abhorrence for wife or acts of violence and abstinence. One such incident was pleaded by the wife and the said incident was also found to be false in the acquittal judgment

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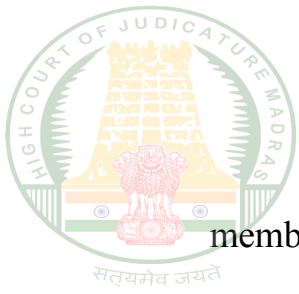
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in C.C.No.252 of 2016. Therefore, a workable solution is certainly not possible. The cumulative effect of both *pre and post* petition conduct of the appellant had disintegrated the marital relationship; broke the amity of the matrimonial peace; devastated the matrimonial spring; stigmatized the reputation of the family, and finally broke the marriage held on 01.02.2009. Therefore, this Court finds no merit in the appeal and accordingly, the appeals are dismissed.

15. In the said circumstances, this Court finds no merit in the contents of the appellant that she established a ground for the restitution of conjugal rights and her husband did not make any case for divorce.

16. During the course of the hearing, this Court called the father namely respondent and enquired about his intention to provide for his daughter. He said that after the divorce granted by the Court below, he entered into a second marriage and through the second marriage, he got children. He firmly said that it is not a ground to disown his responsibility to maintain his daughter. He is ready to take the daughter in his custody, but, due to the pendency of number of criminal cases between the family

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members, he has some reservation to take his daughter into custody since further allegations may be made against him and hence he is ready to provide the educational expenditure and also all the amenities to her. As per the undertaking, this Court made a suggestion to give Rs.5,000/- as a monthly maintenance to the daughter and Rs.5,000/- as a recurring deposit every month and also to provide the transport facilities to the daughter to study in the school and also to meet out the annual education expenditure. The husband agreed for all the above terms and he also undertakes to take care of the daughter after the murder case pending against the appellant and his family members. He also filed undertaking affidavit before this Court. Hence on the basis of that, this Court directs the husband/respondent to adhere to all the terms of the undertaking mentioned in the affidavit. In the result, this Court issues the above direction to the respondent to maintain his daughter and the same should not be taken otherwise to make further allegation against the father as if he committed cruelty on his own daughter.

17.Suggestion to the Bar Council of India & Tamilnadu Puduchery

Bar Council:

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17.1. The legal profession is a noble profession. It is a type of work that involves commitment to the well being of others and all those who belong to it are its honourable members. Although entry into the profession can be had by acquiring merely the academic qualification, the honour and pride of profession has to be maintained by its members by their exemplary conduct both in and outside the Court. The legal profession is different from other professions because whatever they do that affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a role model for others both in his professional and in his private and public life. The society has a right to expect such ideal behaviour from him. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service

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will be too small in making the system efficient, effective and credible.

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The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in the profession on account of the deviant ways of some of its members, it not only slur the profession but also the administration of justice as a whole. The present trend unless checked, is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take the corrective steps in time and also spare the Courts the unpleasant duty. We say no more[1].

The learned members of the Bar have enormous social responsibility and obligation to ensure that the social fibre of family life is not ruined or demolished. They must ensure that exaggerated versions of small incidents should not reflect in the criminal complaints. Majority of the complaints are filed either on their advice or with their concurrence. The learned members of the Bar who belong to a noble profession must maintain its noble traditions and should treat every complaint under Section 498-A as a basic human problem and must make serious

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endeavour to help the parties in arriving at an amicable solution for their

problem. They must discharge their duties to the best of their abilities to

ensure that social fibre, peace and tranquillity of the society remains

intact. The members of the Bar should also ensure that one complaint

should not lead to multiple cases[2]. The right of the advocate to practise

envelopes a lot of acts to be performed by him in discharge of his

professional duties. Apart from appearing in the Courts he can be

consulted by his clients, he can give his legal opinion whenever sought

for, he can draft instruments, pleadings, affidavits or any other

documents, he can participate in any conference involving legal

discussions, he can work in any office or firm as a legal officer, he can

appear for clients before an arbitrator or arbitrators etc. A rule is to be

framed. Such a rule would have nothing to do with all the acts done by an

advocate during his practice. The power to frame such rules should not be

confused with the right to practise law. While the Bar Council can

exercise control over the latter, the Courts are in control of the former [3].

we may voice a few words not by way of admonition but caution. Judges

also belong to legal fraternity. Most of them have come from the

profession and some of them have practised law for more years than they

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have administered it. Hence the anxiety to express the concern[4].¹

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18.It is seen from the record of this case, that the family dispute between the couple was further inflamed by the drafting of the advocate, which went not only beyond the professional ethics, but also against the legitimately expected professional conduct from advocate community to resolve the matrimonial dispute. In Ex.P4, the judgment in the criminal case, it is clearly stated that this complaint was prepared by one advocate. The duty of the advocate in these type of the matters is not to blow the incident out of proportion and thereby cause turbulence to the matrimonial life. The legal profession is for resolving the controversies between parties in the case of matrimonial dispute. The advocate should try to make the marriage and not to break it. The advocate should be a builder, not a destroyer. The advocate should not play spoil sport. Therefore, the Hon'ble Supreme Court repeatedly cautioned and also gave the mandatory direction to all the bar members not to make the problem into unresolvable matrimonial dispute. Unfortunately, in this case, the dispute between the parties was further complicated by the initiation of

¹&4(1995) 3 SCC 619 *Sanjiv Datta, Dy. Secy., Ministry of Information & Broadcasting, In re,*
2.(2010) 7 SCC 667 *Preeti Gupta v. State of Jharkhand,*
3.(2003) 2 SCC 45 *Harish Uppal (Ex-Capt.) v. Union of India*



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number of false criminal complaints. Therefore, this Court while dismissing these appeals, expresses its displeasure over the conduct of the advocates who prepared the complaint after the divorce petition was filed by the respondent and seen the arrest of the family members creating hardship to the respondent family members, which resulted into an irretrievably broken marriage. Hence this Court feels that the Bar Council of India has to step in and formulate guidelines in the following line to all the members of the bar to resolve the matrimonial dispute without adding fuel to fire while matrimonial dealing with the matrimonial discord:

1. Advocates should follow ethical standards whenever the parties solicit their advice.

2. Advocates should never misguide the parties.

3. Advocates should never give unprofessional advice so as to implicate the persons who are not even remotely connected to the alleged occurrence.

4. The Advocates should hear the client and try to advise to go for amicable settlement if possible, since it involves life of two individuals, more to say a family.

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5.The advocates can get the help of qualified counsellor and get a report so as to give proper advice to the party.

6.The Advocates should get the instructions from the client in writing as to the incidents alleged.

7.The Advocates should dissuade the client from roping the persons who they feel are not in anyway even remotely connected to the alleged occurrence.

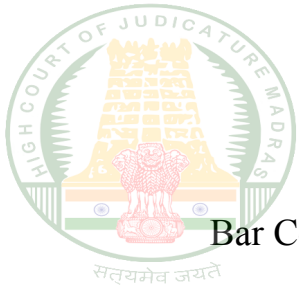
8.The Advocates should inform the client about the legal consequences they would face if they give false complaint against the persons unconnected to the alleged incident.

9.The Advocates should refrain from helping the party by informing the police to arrest the persons.

10.The advocates should play a neutral role and try their best to resolve the issues between husband's family and wife's family.

11.In case if the party is hell-bent on giving false complaint so as to make the opposite party surrender to her whims and fancies, the advocates can play a pro active role to send them away to have a rethink.

12.If any advocate does any thing unprofessional and unethical while drafting complaint or filing cases and if it comes to the notice of



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Bar Council severe action is to be taken.

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(V.B.S.J.,) (K.K.R.K.J.,)
11.09.2024

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

sbn.

To

- 1.The Family Court,
Madurai.
- 2.V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN.J.,

and

K.K. RAMAKRISHNAN.J.,

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