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C.M.S.A(MD)No.44 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

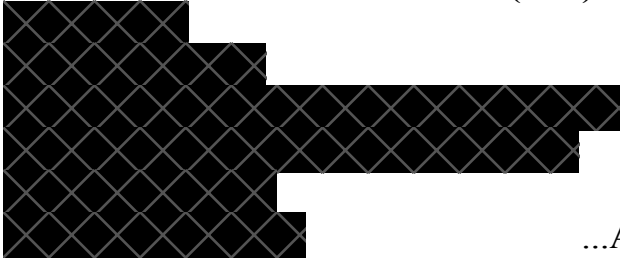
Reserved on : **05.02.2026**

Pronounced on : **01.06.2026**

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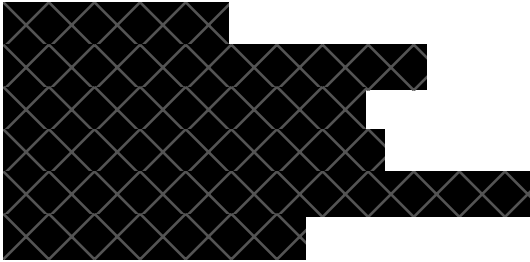
**THE HONOURABLE MR.JUSTICE P.VADAMALAI**

**C.M.S.A(MD)No.44 of 2021**



...Appellant/Appellant/Respondent

Vs.

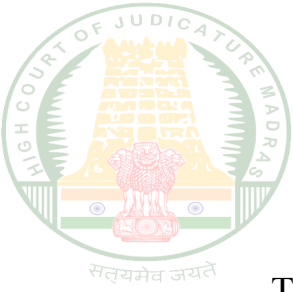


...Respondent/Respondent/Petitioner

**PRAYER:** Civil Miscellaneous Second Appeal is filed under Section 28 of the Hindu Marriage Act r/w Section 100 of CPC.,to set aside the decree and judgment passed in CMA.No.53 of 2018 by the Additional District and Sessions Judge/Fast Track Court, Tenkasi, dated 04.09.2019 confirming the decree and judgment of divorce passed in HMOP.No.157 of 2014 by the Principal Sub Court, Tenkasi, dated 04.12.2017, and dismiss the above HMOP.No.157 of 2014 on the file of the Principal Sub Court, Tenkasi.

For Appellant : Mr.S.Ramesh@Ramiah

For Respondent : Mr.M.P.Senthil  
for Mr.A.Mohamed Haneef



## JUDGMENT

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This Civil Miscellaneous Second Appeal is preferred against the judgment and decree, dated 04.09.2019 passed in C.M.A.No.53 of 2018 on the file of the Additional District and Sessions Judge/Fast Track Court, Tenkasi, confirming the judgment and decree, dated 04.12.2017 passed in H.M.O.P.No.157 of 2014 on the file of the Principal Subordinate Court, Tenkasi.

2.The appellant is the respondent/wife in H.M.O.P.No.157 of 2014 on the file of the Principal Subordinate Court, Tenkasi.

3.For the sake of convenience, the parties are referred to as petitioner and respondent in H.M.O.P.No.157 of 2014 on the file of the Principal Subordinate Court, Tenkasi.

### 4.Brief facts of the case of the petitioner (Husband):

The petitioner and the respondent are husband and wife. Their marriage was solemnized on 30.08.1977 as per Hindu Rites and Customs. Out of wedlock, they were blessed with a son, [REDACTED] (age 36) and a daughter, [REDACTED] (age 33). From the very beginning of marriage, upon suspicion, the respondent frequently quarreled with the petitioner as if he had



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illegal contacts with several women and made an insult in the presence of the general public. The petitioner was working in the Army, and the respondent wrote a letter to higher officials on 19.09.1989 mentioning abusive versions against the petitioner. The respondent, through her son, lodged a police complaint and the same was registered in Crime No.333 of 1997 by Alangulam Police Station, and the case was taken on cognizance in C.C.No.388 of 1998 by the Principal Assistant Sessions Court, Tenkasi. In that case, the petitioner was convicted for 7 years and on appeal, the sentence was reduced. Thereafter, the petitioner has been living separately. In order to grab the self-acquired properties of the petitioner, the respondent created concocted documents, for which a criminal case in C.C.No.347 of 2009 is pending against the respondent. The respondent converted to Christianity and adopted Christian rites, and thereby causing mental agony to the petitioner. By these acts, the respondent caused mental cruelty and she deserted the petitioner. There is no possibility of reunion. Hence, the petitioner has filed a petition in HMOP.No.157 of 2014 against the respondent seeking divorce U/s.13(1)(ia)(ib), (ii) of the Hindu Marriage Act.

#### **5. Brief facts of the case of the respondent (Wife):**

The petitioner was working in the Indian Army at Allahabad. After marriage, the petitioner took the respondent to Allahabad, where she



became pregnant. The respondent came to her parental home for delivery.

The petitioner used to visit her parental home, where he developed an illegal contact with one girl, Muthukutti. On enquiry, the petitioner admitted the said relationship even before marriage, however, the respondent continued matrimonial life. Their matrimonial life continued on good terms till 1985.

Then, the petitioner harassed the respondent to give her sister in marriage to him. So, the respondent wrote a letter to the higher officials of the petitioner.

The petitioner retired in 1991 and started living with the respondent at their hometown, Sivalarkulam. Thereafter, he developed illegal intimacy with one

Maragatham. While questioning the same, on 02.12.1996, the petitioner confined the respondent and her children inside the house and set it on fire.

So, the respondent gave a complaint before the Alangulam police station.

Again, the petitioner had illegal contact with another woman, Poornam and started living with her and harassed the respondent to give consent for

marrying the said Poornam. As the respondent refused, the petitioner quarreled with her and cut her right thumb, hence, the respondent's son

gave a complaint and a case in Crime No.333 of 1997 was registered and after trial, the Assistant Sessions Court found the petitioner

guilty and convicted him. Now, the petitioner is living with Poornam Ammal at KTC Nagar. Hence, there is no atmosphere for the respondent to live with

the petitioner. The petitioner filed a suit in O.S.No.227 of 2008 for a



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declaration that the properties are his absolute properties. The respondent filed a suit in O.S.No.445 of 2008 for partition. The suit filed by the respondent was decreed and the petitioner's suit was dismissed. The respondent never converted to Christianity. Only to prevent the respondent from getting the retirement benefits of the petitioner, the petitioner has filed this petition with bad intentions. Hence, this petition is liable to be dismissed.

6.Before the Trial Court, the petitioner examined himself as P.W.1 and examined one Nellaiyappan as P.W.2 and marked two exhibits as Ex.P.1 and Ex.P.2. The respondent has examined herself as R.W.1 and marked one exhibit as Ex.R.1.

7.After hearing both sides and after considering both sides evidence, the learned Additional Subordinate Judge, Tenkasi allowed the petition in H.M.O.P.No.157 of 2014, granting divorce by passing an order, dated 04.12.2017.

8.Aggrieved by the said judgment and decree, the respondent has preferred the Civil Miscellaneous Appeal in H.M.C.M.A.No.53 of 2018 before the Additional District and Sessions Court (Fast Track Court), Tenkasi.



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The first Appellate Court, after hearing both sides and after considering the material records, passed judgment and decree, dated 04.09.2019, dismissing the Civil Miscellaneous Appeal and confirming the judgment and decree, dated 04.12.2017, passed in HMOP.No.157 of 2014.

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**9.**Challenging the judgment and decree of the First Appellate Court, the respondent has preferred this Civil Miscellaneous Second Appeal and the same has been admitted on the following substantial questions of law:-

*i) Whether the Courts below are correct in finding that the wife is guilty of cruelty and whether the finding is correct and justified?*

*ii) Whether the Courts below are correct in granting a decree of divorce without testing the grant of relief under Section 23(1) of the Hindu Marriage Act and whether the same is against law and unsustainable?*

**10.**Heard both sides and perused the records in this Civil Miscellaneous Second Appeal.

**11.**The learned counsel for the appellant, hereinafter referred as the respondent/wife, has argued that the petitioner/husband has sought divorce against the respondent/wife on the grounds of cruelty, desertion, conversion



of religion and long separation. The ground of desertion was declined by the Courts below. The petitioner/husband claimed cruelty for the reason that the respondent/wife wrote a letter to the higher officials of the petitioner/husband in the Army, alleging that the petitioner has illegal contacts with some other women. The alleged letter was sent in the year 1989 and there was no legal action taken by the petitioner/husband against the respondent/wife at the relevant point of time. Thereafter, the petitioner/husband retired in 1991. After retirement, the petitioner/husband and the respondent/wife started living jointly at Sivalarkulam. So, the cruelty was deemed to be condoned. The petitioner filed this petition for divorce in 2014, tracing the cause of action that took place in 1989, which was already condoned by the petitioner as both lived jointly after retirement from 1991. As per Section 23(1)(b) of the Hindu Marriage Act, it is clear that past incidents which have been condoned cannot be reversed and that there should not be any improper delay. The incidents alleged should be of a recurring or continuing nature and should occur in near proximity to filing the petition. The petition for divorce was filed in 2014 with enormous delay, which is a bar on the petitioner from seeking to invoke action on an incident that took place in 1989.

12. The learned counsel for the appellant further argued that another reason for cruelty is the institution of criminal cases. The criminal cases came



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to be filed only on the acts of the petitioner/husband who inflicted grievous injuries on the respondent/wife and cut one of her finger in right hand.

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Moreover, the petitioner/husband confined the respondent/wife and her children inside the house and set it on fire. Hence, both the criminal cases came to be lodged only upon the acts of the petitioner/husband. The respondent/wife and her son have not lodged a false complaint on their own. The respondent/wife has taken recourse to law to exercise her legal right, which cannot be construed as a ground for cruelty. The institution of civil suits by both parties will not be termed as cruelty. Therefore, as per provision of Section 23(1) of the Hindu Marriage Act, the petitioner/husband is not entitled for divorce as past incidents were condoned and the same cannot be reverted back and also the respondent/wife took recourse to law to exercise her legal right.

**13.**The learned counsel for the appellant further argued that the petitioner/husband alleged that the respondent/wife converted herself to Christianity. For the conversion to the Christian religion, it requires certain ceremonies and Baptism. The petitioner/husband has not produced any of the records to show the respondent/wife's conversion. No competent person or any other person was examined to prove the same. The petitioner has filed only Ex.P.1 - Birth Certificate of grandson through his daughter and that



certificate will not hold any bearing. The last ground is a long separation, which is not a ground for divorce under the Hindu Marriage Act. The Hon'ble Supreme Court has clearly clarified and held that the trial Courts and the High Courts have no power to grant divorce on the ground of irretrievable break down of marriage and the same has been a ground for divorce only under the special powers of the Supreme Court only under Article 142 of the Constitution, considering the peculiar circumstances of cases. The Courts below erred in granting a divorce and the same has to be set aside. Therefore, this appeal may be allowed.

14. In support of his argument, the learned counsel for the respondent/wife, appellant herein has relied on the following citations:

**(1) (2017) 4 Supreme Court Cases 85 in the case of “Suman Singh /v/ Sanjay Singh” in paragraph Nos.14 and 15 it is held as follows:**

*"14. This we hold for more than one reason. First, almost all the grounds taken by the respondent in his petition were stale or/and isolated and did not subsist to enable the respondent to seek a decree for dissolution of marriage. In other words, the incidents of cruelty alleged had taken place even, according to the respondent, immediately after marriage. They were solitary incidents relating to the behavior of the appellant. Second, assuming that*



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*one or more grounds constituted an act of cruelty, yet we find that the acts complained of were condoned by the parties due to their subsequent conduct inasmuch as admittedly both lived together till 2006 and the appellant gave birth to their second daughter in 2006. Third, most of the incidents of alleged cruelty pertained to the period prior to 2006 and some were alleged to have occurred after 2006. Those pertained to period after 2006 were founded on general allegations with no details pleaded such as when such incident occurred (year, month, date etc.), what was its background, who witnessed, what the appellant actually said etc.*

*15. In our view, the incidents which occurred prior to 2006 could not be relied on to prove the instances of cruelty because they were deemed to have been condoned by the acts of the parties. So far as the instances alleged after 2006 were concerned, they being isolated instances, did not constitute an act of cruelty.*

**(2) 2023 SCC Online Del 4369 in the case of ‘Nidhi Jain /v/ Ankit**

**Jain” it is held in paragraph No.41 as follows:**

*"41.Irretrievable breakdown of marriage is not a ground in the Hindu Marriage Act for grant of divorce. The Supreme Court in Shilpa Sailesh v.*



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*Varun Sreenivasan, has held that in exercise of power under Article 142 (1) of the Constitution of India, it has the discretion to dissolve the marriage on the ground of its irretrievable breakdown, supplementing that such discretionary power is to be exercised to do 'complete justice' to the parties, wherein it is satisfied that the facts established shows that the marriage has completely failed and there is no possibility that the parties will cohabit together, and continuation of the formal legal relationship is unjustified. However, such a power akin to Article 142 of the Constitution of India has not been conferred on the High Courts.*

**(3) (2009) 6 Supreme Court Cases 379 in the case of “Vishnu Dutt Sharma /v/ Manju Sharma” wherein it is held in paragraph Nos.10, 11, 12 and 13 as follows:**

*"10.On a bare reading of Section 13 of the Act, reproduced above, it is crystal clear that no such ground of irretrievable breakdown of the marriage is provided by the legislature for granting a decree of divorce. This Court cannot add such a ground to Section 13 of the Act as that would be amending the Act, which is a function of the legislature.*

*11.Learned counsel for the appellant has stated that this Court in some cases has dissolved a*



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*marriage on the ground of irretrievable breakdown. In our opinion, those cases have not taken into consideration the legal position which we have mentioned above, and hence they are not precedents. A mere direction of the Court without considering the legal position is not a precedent.*

*12.If we grant divorce on the ground of irretrievable breakdown, then we shall by judicial verdict be adding a clause to Section 13 of the Act to the effect that irretrievable breakdown of the marriage is also a ground for divorce. In our opinion, this can only be done by the legislature and not by the Court. It is for the Parliament to enact or amend the law and not for the Courts. Hence, we do not find force in the submission of the learned counsel for the appellant.*

*13.Had both parties been willing we could, of course, have granted a divorce by mutual consent as contemplated by Section 13B of the Act, but in this case the respondent is not willing to agree to a divorce."*

**(4) (2009) 10 Supreme Court Cases 415 in the case of ‘Anil Kumar Jain /v/ Maya Jain’ wherein it is held in paragraph Nos.29 and 30 as follows:**

*"29.In the ultimate analysis the aforesaid discussion throws up two propositions. The first*



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*proposition is that although irretrievable break-down of marriage is not one of the grounds indicated whether under [Sections 13](#) or [13-B of the Hindu Marriage Act, 1955](#), for grant of divorce, the said doctrine can be applied to a proceeding under either of the said two provisions only where the proceedings are before the Supreme Court. In exercise of its extraordinary powers under [Article 142](#) of the Constitution the Supreme Court can grant relief to the parties without even waiting for the statutory period of six months stipulated in [Section 13-B](#) of the aforesaid Act. This doctrine of irretrievable break-down of marriage is not available even to the High Courts which do not have powers similar to those exercised by the Supreme Court under [Article 142](#) of the Constitution. Neither the civil courts nor even the High Courts can, therefore, pass orders before the periods prescribed under the relevant provisions of the Act or on grounds not provided for in [Sections 13](#) and [13-B](#) of the Hindu Marriage Act, 1955.*

*30. The second proposition is that although the Supreme Court can, in exercise of its extraordinary powers under [Article 142](#) of the Constitution, convert a proceeding under [Section 13](#) of the Hindu Marriage Act, 1955, into one under [Section 13-B](#) and pass a decree for mutual divorce, without waiting for the statutory period of six*



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*months, none of the other Courts can exercise such powers. The other Courts are not competent to pass a decree for mutual divorce if one of the consenting parties withdraws his/her consent before the decree is passed. Under the existing laws, the consent given by the parties at the time of filing of the joint petition for divorce by mutual consent has to subsist till the second stage when the petition comes up for orders and a decree for divorce is finally passed and it is only the Supreme Court, which, in exercise of its extraordinary powers under [Article 142](#) of the Constitution, can pass orders to do complete justice to the parties.*

**15.**Per contra, the learned counsel for the respondent hereinafter referred to as the petitioner/husband has vehemently contended that the petitioner/husband is an retired army-man, the respondent/wife has been repeatedly and frequently quarreling with the petitioner/husband alleging that he has illegal contacts with several ladies and that she sent complaints regarding the same to the Army higher officials. She made such allegations in her counter and evidence. This was categorically admitted by the respondent/wife in her evidence also. Criminal cases were lodged against the petitioner/husband and the petitioner/husband was convicted and sentenced to 7 years. Moreover, two civil suits in O.S.Nos.227 of 2008 and 445 of 2008



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were pending between the parties and the second appeals are still pending before this Court. The respondent/wife has removed the Thali and converted to the Christian religion. The respondent/wife still does not have Thali and she admitted the same in her evidence. The respondent/wife has falsely stated that the petitioner/husband and the respondent/wife are living jointly. The respondent/wife has clearly stated in her counter that the petitioner/husband has been living with Poornam Ammal from the year 1997 in Thiruchendur and this was clearly admitted by the respondent/wife in her counter as well as in her evidence. So, the petitioner/husband and respondent/wife have been living separately for more than 31 years, and their children have also got married and are living separately. The respondent/wife has not taken any steps for joint living, muchless has not filed any petition for restitution of conjugal rights U/s.9 of the Hindu Marriage Act. Therefore, there is no possibility of living together, and their marriage has broke down irretrievably. These facts were correctly appreciated by the Courts below based on the evidence and correctly granted a divorce. The Courts below gave concurrent findings and there is no question of law arising in this appeal. Therefore, the appeal has to be dismissed.



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16. In support of his argument, the learned counsel for the petitioner/husband/respondent herein has relied on the following citations:

**(1) Order in C.M.A.No.2924 of 2017 of Madras High Court in the case of V.Kasthuri /v/ D.Bharath, dated 09.01.2026.**

**(2) 2009 (3) CTC 15 of Madras High Court in the case of D.Nagappan /v/ T.Virgin Rani.**

**(3) Order in C.M.S.A.Nos.21 & 22 of 2023 of Madurai Bench of Madras High Court in the case of Kavitha /v/ Senthilkumaran.**

**(4) (2007) 4 Supreme Court Cases 511 in the case of Samar Ghosh /v/ Jaya Ghosh**

**(5) 2022 (3) MWN (Civil) 572 of Madras High Court in the case of C.Sivakuar /v/ A.Srividhya**

**(6) 2021 (1) MWN (Civil) 589 of the Hon'ble Supreme Court in the case of Joydeep Majumdar /v/ Bharti Jaiswal Majumdar.**

**(7) AIR 2023 Supreme Court 4186 in the case of Roopa Soni /v/ Kamalnarayan Soni**

**(8) 2022 SCC Online Ker. 778 in the case of Beena M.S. /v/ Shino G.Babu.**

17. I have carefully considered the arguments advanced by both sides and perused the material records of the case. The petitioner/husband sought divorce against the respondent/wife on the ground of cruelty, alleging that the



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petitioner/husband had illegal contacts with some other women and the same was conveyed to the higher officials of the petitioner/husband, who was working in the Indian Army. He further alleged that the respondent/wife removed her Thali and did not wear any jewels as she had converted religion from Hindu to Christian. Of course, there is no documentary evidence to either prove or disprove the same by either side. But a careful perusal of the evidence of the respondent/wife as R.W.1, clearly shows that she admitted in her evidence, that she sent complaints to the Army Higher Officials of the petitioner/husband regarding his alleged illegal contacts with women. She admitted in her cross as “நான் என்னுடைய எதிருரையில் மனுதாரருக்கு நான்கு பெண்களுடன் தொடர்பு இருப்பதாக சொல்லியுள்ளேன். நான் மனுதாரர் ராணுவத்தில் பணிபுரிந்து வந்தபோது அவருடைய மேல் அதிகாரிகளுக்கு புகார் அனுப்பியிருந்தேன் ....”. So, it is very clear that the respondent/wife admitted that she made a complaint to the Army's Higher officials regarding the petitioner/husband's alleged illegal contacts with a woman. It is a settled position of law that admissions are the best evidence and do not require any documentary evidence.

**18.**A perusal of rulings relied on by the petitioner/husband, including that of the Three Bench of the Hon'ble Supreme Court in its judgment in **Joydeep Majumdar /v/ Bharti Jaiswal Majumdar** case reported in **2021**

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(1) MWN (Civil) 589 has clearly held in paragraph Nos.11, 12, 13 and 14 are as follows:

*"11.The materials in the present case reveal that the respondent had made several defamatory complaints to the appellant's superiors in the Army for which, a Court of inquiry was held by the Army authorities against the appellant. Primarily for those, the appellant's career progress got affected. The Respondent was also making complaints to other authorities, such as, the State Commission for Women and has posted defamatory materials on other platforms. The net outcome of above is that the appellant's career and reputation had suffered.*

*12.When the appellant has suffered adverse consequences in his life and career on account of the allegations made by the respondent, the legal consequences must follow and those cannot be prevented only because, no Court has determined that the allegations were false. The High Court however felt that without any definite finding on the credibility of the wife's allegation, the wronged spouse would be disentitled to relief. This is not found to be the correct way to deal with the issue.*

*13.Proceeding with the above understanding, the question which requires to be answered here is whether the conduct of the respondent would fall within the realm of mental cruelty. Here the allegations are levelled by a highly educated spouse*



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*and they do have the propensity to irreparably damage the character and reputation of the appellant. When the reputation of the spouse is sullied amongst his colleagues, his superiors and the society at large, it would be difficult to expect condonation of such conduct by the affected party.*

*14.The explanation of the wife that she made those complaints in order to protect the matrimonial ties would not in our view, justify the persistent effort made by her to undermine the dignity and reputation of the appellant. In circumstances like this, the wronged party cannot be expected to continue with the matrimonial relationship and there is enough justification for him to seek separation.*

The respondent/wife has not proved the alleged illegal contact of the petitioner/husband by adducing evidence. From the above ruling, it is very clear that when a spouse makes defamatory complaints about the other spouse to his/her superiors, it is enough justification for seeking divorce legally.

**19.**At this juncture, the learned counsel for the respondent/wife has contended that the petitioner/husband retired from the Army and they jointly lived together, so the petitioner/husband is deemed to have condoned the above allegations. But on perusal of the evidence, there were subsequent quarrels between the spouses, resulting in the filing of criminal cases in



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which the petitioner/husband was convicted. The petitioner/husband in his cross has stated as follows:

“... நான் 1991ம் ஆண்டு ஓய்வு பெற்றுவிட்டேன். நான் ஓய்வு பெற்றவுடன் சீவலார் குளம் என்ற ஊரில் குடியிருந்து வந்தேன். அங்கு நானும் என் மனைவியும் ஒன்றாக தான் இருந்தோம். சீவலார்குளத்தில் இருக்கும் போது எனக்கும் மரகதம் என்பவருக்கும் தொடர்பு இருந்ததாக சொல்வது சரியல்ல. மேற்படி பிரச்சனை காரணமாக நான் என்னுடைய மனைவி, மகன் மற்றும் மகளை வீட்டிற்குள் வைத்து பூட்டி தீ வைத்தேன் என்று சொன்னால் சரியல்ல. விசாரித்து புகார் தள்ளுபடி செய்யப்பட்டது. என்னுடைய மனு 5 மற்றும் வேது பாராவில் உடல் தீங்கு என்று சொல்லியிருப்பது என் மனைவி என்னை கொன்றுவிடுவாரோ என்ற அர்த்தத்தில் சொல்லியுள்ளேன். என்னுடைய மனைவியை அருவாள் வைத்து வெட்டியதால் அவருடைய கட்டைவிரல் துண்டானது அதன்மீது என் மகன் புகார் கொடுத்தார். அந்த புகாரின் பேரில் குற்ற வழக்கு பதிவு செய்யப்பட்டு எனக்கு நீதிமன்றத்தில் தண்டனை வழங்கப்பட்டது.....”

From the evidence it shows that after retirement at the time of alleged joint living, there was a quarrel made by the respondent/wife with the petitioner/husband regarding the same allegation of illegal contacts, which means the allegation of illegal contact against the petitioner/husband continued by the respondent/wife, so the argument advanced by the respondent/wife's counsel in respect of condonation of earlier allegations does not favour the wife. Moreover, the criminal cases came to take place

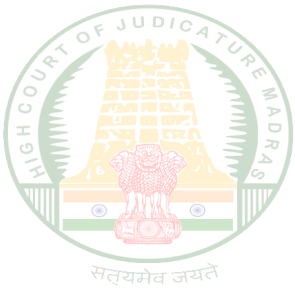


upon the respondent/wife's continued quarrel over the same allegation of illegal contact with a woman. So, the assistance under Section 23(1) of the Hindu Marriage Act sought by the respondent/wife's counsel is unhelpful to her version.

**20.**The next ground for divorce is that the respondent/wife has removed the Thali. It is the evidence of the respondent/wife as R.W.1 that she clearly admitted that she removed "Thali" and does not wear gold ornaments. So, the allegation of conversion to Christianity by the respondent/wife cannot be brushed aside, as there is no substance. Regarding removal of Thali, the Division Bench of this Court has clearly held in **Sivakumar's case 2022 (3) MWN (Civil) 572** as follows in paragraph Nos.18 & 19.

*"18.Hence in the facts and circumstances of the case and also in view of our finding that the respondent/wife by her act caused mental cruelty to the husband, we propose to put a full stop to the marital tie by granting decree dissolving the marriage between the petitioner and the respondent that took place on 10.11.2008.*

*19.When the respondent/wife was examined as R.W.1, she admitted that at the time of separation, she removed her thali chain (Sacred chain worn by wife as a token of having married). Though she proceeded to explain that she retained thali and only*



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*removed the chain, the act of removing thali chain had its own significance. The learned counsel for the respondent by taking us to ceremonious for Hindu Marriage referring to Section 7 of Hindu Marriage Act submitted that tying of thali is not a necessary one and hence removal of thali by respondent, even assuming it was true, would not have any impact on the marital tie. But, it is a matter of common knowledge that tying of thali is an essential ritual in marriage ceremony that takes place in this part of the world. It is useful to refer, the observations of a coordinate Bench of this Court in **Vallabhi Vs. R.Rajasabahi** reported in 2017 (1) MWN (Civil) 128 (DB). The Observations of the Division Bench of this Court is as follows:*

*"33. From the materials available on record, it is also seen that the petitioner has removed the "Thali" (Mangalsutra) and it is also her own admission that she has kept the same in Bank locker. It is known fact that no Hindu married woman would remove the "Thali" at any point of time during the lifetime of her husband. "Thali" around the neck of a wife is a sacred thing which symbolises the continuance of married life and it is removed only after the death of Husband. Therefore, the removal of "Thali" by the petitioner/wife can be said to be an act, which reflected Mental Cruelty of highest order as it could have caused agony and hurted the sentiments of the respondent."*



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From the above, it is very clear that the respondent/wife adopted Christianity as her daughter's name and her marriage to a Christian is revealed from Ex.P.1 and Ex.P.2 and hence, the allegation of conversion of religion by the respondent/wife cannot be thrown away upon consideration of the entire evidence on record. This Court holds that the removal of Thali would reflect mental cruelty.

**21.**The next submission of the respondent/wife's counsel is that the Courts below and the High Court cannot grant a divorce on the ground that the marriage has irretrievably broken down and that the same can be granted only by the Hon'ble Supreme Court under Article 142 of the Constitution. A perusal of the rulings relied on by the learned counsel for the respondent/wife reveals that the argument of the respondent/wife's side is somewhat correct one, but at the same time, it cannot be construed that the Courts below and the High Court could not consider the fact of the marriage having irretrievably broken down while seeking divorce on the ground of cruelty. This Court clearly held in its judgment in C.M.A(MD)Nos.21 & 22 of 2023, dated 28.10.2024, relied on by the petitioner/husband's side, that living separately for a long period and refusal to sever a strained relationship itself leads to mental cruelty. The respondent/wife in her evidence clearly admitted that she is living separately from her husband. She admitted in her evidence



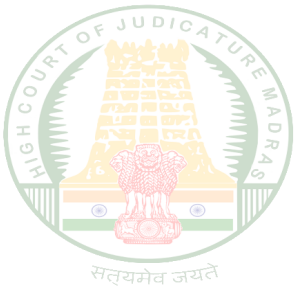
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that '1996ம் ஆண்டிலிருந்து என் கணவரை பிரிந்து வாழ்ந்து வருகிறேன்..'.  
The petitioner/husband has now pointed out that the respondent/wife has not

taken any steps for reunion or at least she has not chosen to file a petition for restitution of conjugal rights U/s.9 of the Hindu Marriage Act. This was not specifically denied by the respondent/wife side. So, as of now, the petitioner/husband and the respondent/wife have been separately living for more than 30 years.

22.The Hon'ble Supreme Court in **Rakesh Raman /vs/ Kavita** case reported in **AIR 2023 Supreme Court 2144**, wherein it is held in paragraph No.18 as follows:

*“18. We have a married couple before us who have barely stayed together as a couple for four years and who have now been living separately for the last 25 years. There is no child out of the wedlock. The matrimonial bond is completely broken and is beyond repair. We have no doubt that this relationship must end as its continuation is causing cruelty on both the sides. The long separation and absence of cohabitation and the complete breakdown of all meaningful bonds and the existing bitterness between the two has to be read as cruelty under section 13(1)(ia) of the 1955 Act. We therefore hold that in a given case, such as*



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*the one at hand, where the marital relationship has broken down irretrievably, where there is a long separation and absence of cohabitation (as in the present case for the last 25 years), with multiple Court cases between the parties; then continuation of such a 'marriage' would only mean giving sanction to cruelty which each is inflicting on the other.....”.*

Hence, very long separate living without the reason or consent of the other spouse can also constitute mental cruelty to the other spouse. Thus, the Courts below have correctly held that the petitioner/husband has established the ground of cruelty against the respondent/wife.

**23.**From the above facts and circumstances, the respondent has not established her case and therefore, the substantial questions of law are decided against the respondent/appellant herein. This Court is of the considered view that the case of the petitioner/respondent herein is proved by him as correctly decided by the Trial Court and confirmed by the first Appellate Court. The concurrent finding of the Courts below does not warrant interference by way of this appeal. Thus, this Civil Miscellaneous Second Appeal fails.



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**24.**In the result, this Civil Miscellaneous Second Appeal is dismissed.

The judgment and decree, dated 04.09.2019, passed in C.M.A.No.53 of 2018 on the file of the Additional District and Sessions Judge/Fast Track Court, Tenkasi, confirming the judgment and decree passed in H.M.O.P.No.157 of 2014 on the file of the Principal Subordinate Court, Tenkasi, are confirmed.

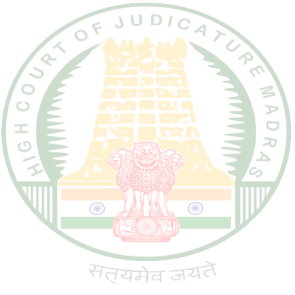
No costs.

**01.06.2026**

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

**To**

- 1.The Additional District and Sessions Judge/  
Fast Track Court, Tenkasi.
- 2.The Principal Subordinate Judge,  
Tenkasi.
- 3.The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**P.VADAMALAI, J.**

VSD

Pre - Delivery Judgment made in  
**C.M.S.A(MD)No.44 of 2021**

**01.06.2026**

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