

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 01.09.2026

PRONOUNCED ON : 25.09.2026

CORAM

**THE HONOURABLE MR JUSTICE G.R.SWAMINATHAN**

**AND**

**THE HONOURABLE MRS.JUSTICE M.D.SUMATHI**

**CMA(MD) Nos. 993 & 994 of 2022**

*{CNR: HCMD011022042022}*



Case QR

**AND**

**CMP(MD)Nos.9890 & 9891 of 2022**

R

.. Appellant in both cases

-Vs-

R

.. Respondent in both cases

**Prayer in CMA(MD)No.993/2022** : Civil Miscellaneous Appeal filed under Section 19 of Family Court Act, to set aside the impugned fair and decreetal order passed in H.M.O.P.No.166 of 2019 dated 08-08-2022 on the file of Family Court, Tirunelveli.

**Prayer in CMA(MD)No.994/2022** : Civil Miscellaneous Appeal filed



under  
Section 19 of Family Court Act, to set aside the impugned fair and decreetal order passed in H.M.O.P.No.31 of 2021 dated 08-08-2022 on the file of Family Court, Tirunelveli.

**In both cases:**

For Appellant : Mr.P.M.Vishnuvarthanan

For Respondent : Mr.S.Kumar

**COMMON ORDER**

(Judgment of the Court was made by **M.D.SUMATHI, J.**)

These two Civil Miscellaneous Appeals have been preferred by the husband challenging the Common Order dated 08.08.2022 passed by the learned Family Court, Tirunelveli in H.M.O.P.Nos.166 of 2019 and 31 of 2021.

2. The H.M.O.P.No.166 of 2019 was filed by the appellant/husband under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, 1955, seeking dissolution of the marriage on the grounds of cruelty and desertion. And the H.M.O.P.No.31 of 2021 was filed by the respondent/wife under Section 9 of



the Hindu Marriage Act seeking restitution of conjugal rights. By the Common Order dated 08.08.2022, the learned Family Court dismissed the petition filed by the husband and allowed the petition filed by the wife. Aggrieved thereby, the husband has preferred the present appeals.

3. For the sake of convenience, the parties shall hereinafter be referred to as the husband and wife.

4. The marriage between the husband and wife was solemnized on 09.09.2015 at S.N.S.Mahal, Vadiveeswaram, Nagercoil, according to the customs prevailing in their community. At the time of marriage, the husband was employed as an Engineer in M/s. Bosch Limited and the wife was employed as a Software Engineer in America. A female child was born to them on 01.09.2016 at St. George Hospital, Nagercoil.

5. According to the husband, the matrimonial relationship became strained from the early days of the marriage. He alleged that on the fifth day of marriage, when he asked the wife to wash clothes, she quarrelled with him and used harsh words. He further alleged that when they were residing at Bangalore, the wife insisted that his parents should not come there, that he should not speak to them frequently and that he should not go to his native



place to meet them. He stated that, being the only son, he could not accept such restrictions.

6. The husband further alleged that during the first Deepavali after marriage, the wife insisted that he drive the car from Bangalore to the native place. Since he was not well-versed in long-distance driving, he travelled by bus with her, which, according to him, resulted in another quarrel.

7. The wife became pregnant and a female child was born on 01.09.2016. The husband thereafter proceeded to Germany on 19.09.2016 in connection with his employment. According to the husband, he requested that the naming ceremony be conducted early so that he could participate in it before leaving abroad. After massive squabble, the naming ceremony was conducted on 10.09.2016. The child was initially referred to as \_\_\_\_\_ and the husband alleged that the official name was subsequently entered as \_\_\_\_\_ without his consent.

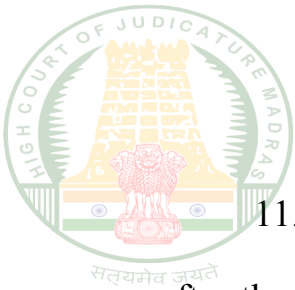
8. The husband thereafter went abroad and the wife remained at her parental home along with the child. The husband alleged that, despite requests made by his parents, the wife did not return to the matrimonial home at



Palayamkottai. He further alleged that when his parents went to the wife's parental home with gifts and articles for the child and requested her to return, they were quarreled with and driven away and failed to receive the gifts brought by them, and that they were also prevented from seeing their granddaughter.

9. The husband further alleged that the wife did not bring the child to Palayamkottai for the star-birthday function on 22.08.2017 and that, despite efforts for reunion, she did not resume matrimonial life. He subsequently issued legal notice dated 09.05.2019, marked as Ex.P5, which was returned and thereafter another notice was issued, followed by the reply dated 31.05.2019 marked as Ex.P7.

10. The wife resisted the divorce petition and denied the allegations. According to her, the marriage expenses were substantially borne by her parents. She alleged that the husband was excessively guided by his mother even in day-to-day matters, including cooking, and that she was subjected to unpleasant treatment concerning the birth of a female child. She denied that the child's official name was changed without the husband's knowledge.



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11. The wife specifically contended that the husband left for Germany after the naming ceremony without taking her and the child with him and that she was always ready and willing to join him at Palayamkottai. She further stated that attempts were made for reunion and that she had approached the Nagercoil Police Station seeking reunion with the husband. During the enquiry, according to her case, she expressed her willingness to live with the husband, but the husband subsequently evaded reunion.

12. Before considering the rival contentions, it is significant that the averments in H.M.O.P.No.166 of 2019 filed by the husband and H.M.O.P.No. 31 of 2021 filed by the wife substantially arise from the very same matrimonial events and the same period of separation. The marriage, birth of the child, the husband's departure abroad, the wife's residence at her parental home, attempts for reunion and the subsequent failure to resume cohabitation are common foundational events. The principal difference lies in the interpretation placed by each party upon those events.

13. Though the parties have attributed the cause for such separation to each other, the foundational circumstances pleaded in both proceedings are substantially common. The husband, in his petition for divorce, relies upon the



conduct of the wife and alleges that her conduct compelled him to live separately and ultimately constituted cruelty and desertion. On the other hand, the wife, in her petition for restitution of conjugal rights, relies upon substantially the same sequence of events and contends that it was the husband who failed to take her back to the matrimonial home and withdrew from her without reasonable cause.

14. The two proceedings therefore cannot be viewed as two wholly independent disputes arising from different causes of action. The evidence and circumstances in one proceeding necessarily have a bearing upon the appreciation of the rival case in the other. The husband's case is that the wife's conduct constituted cruelty and desertion; the wife's case is that the separation was occasioned by the conduct of the husband and his family and that she remained willing to resume matrimonial life.

15. It is also material that, according to the evidence noticed by the learned Family Court, the parties lived together at Bangalore for about seven months and the matrimonial life during that period was substantially peaceful. The trial court found that the entire dispute substantially revolved around the interaction between the wife and the husband's parents and the influence

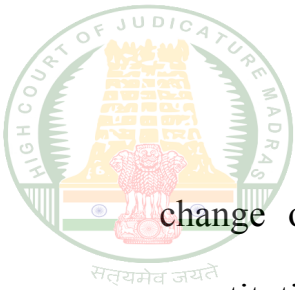


attributed by each side to their respective parents. Thus, the record does not disclose a prolonged and continuous dispute between the husband and wife themselves of such gravity as to necessarily constitute matrimonial cruelty.

16. On the side of the husband, the husband was examined as P.W.1 and his cousin brother Vadivelu was examined as P.W.2. Exs.P1 to P10 were marked. On the side of the wife, the wife was examined as R.W.1 and Exs.R1 to R6 were marked.

17. The learned Judge, Family Court, after considering the pleadings and evidence, dismissed H.M.O.P.No.166 of 2019 and allowed H.M.O.P.No.31 of 2021. The Court found that the allegations relating to washing clothes, the dispute concerning travelling by car or bus and the wife's objection to the husband's frequent communication with his parents were matters falling within the normal wear and tear of matrimonial life. The Court further found that the serious allegations concerning the husband's parents were not satisfactorily established, particularly because the parents, who were the alleged victims of the conduct, had not been examined and P.W.2 was not an eyewitness.

18. The Family Court also found that the allegation regarding unilateral



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change of the child's name was not established in a manner capable of constituting cruelty. On desertion, the Court noticed that the husband had left for Germany on 19.09.2016, that communication continued between the parties and that attempts were made through the maternal uncle for reconciliation. The Court therefore held that the wife's residence at her parental home, particularly when the husband himself was abroad and she was caring for the minor child, could not by itself constitute desertion.

19. The learned Judge, Family Court, also took note of the wife's consistent case that she was willing to resume matrimonial life and of her approach to the Nagercoil Police Station for reunion. In the circumstances, the petition for restitution of conjugal rights was allowed.

20. The following points arise for consideration in these appeals:

- (i) Whether the husband has established that the conduct attributed to the wife amounts to cruelty within the meaning of Section 13(1)(ia) of the Hindu Marriage Act?
- (ii) Whether the husband has established the statutory ingredients of desertion under Section 13(1)(ib) of the Hindu Marriage Act?
- (iii) Whether the decree for restitution of conjugal rights granted in



favour of the wife calls for interference?

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

22. The allegation of cruelty has to be tested on the entire matrimonial relationship and not by magnifying isolated incidents. In *Dr. N.G. Dastane v. S. Dastane*, AIR 1975 SC 1534, the Hon'ble Supreme Court cautioned that simple trivialities which may properly be described as the reasonable wear and tear of married life are to be ignored and that attention should be directed to grave and weighty incidents.

23. In *J.L. Nanda v. Smt. Veena Nanda*, AIR 1988 SC 407, the Hon'ble Supreme Court reiterated that petty quarrels and incompatibility of temperament do not, by themselves, amount to cruelty. The nature and effect of the conduct must be examined in the context of the particular marriage.

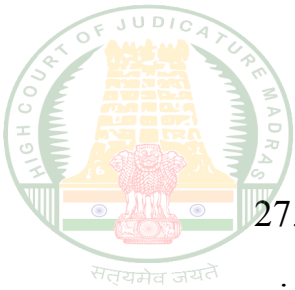
24. The governing principles were comprehensively reiterated in *Samar Ghosh v. Jaya Ghosh*, (2007) 4 SCC 511. The Supreme Court held, inter alia, that mere trivial irritations, quarrels and normal wear and tear of married life



occurring in day-to-day life are not adequate for granting divorce on the ground of mental cruelty; that the married life has to be reviewed as a whole; and that a few isolated incidents do not amount to cruelty unless the conduct is persistent and of such a degree that the relationship has deteriorated to an extent that the wronged spouse cannot reasonably be expected to live with the other.

25. The same principle is also reflected in ***Vishwanath Agrawal v. Sarla Vishwanath Agrawal*, (2012) 7 SCC 288**, where the Supreme Court considered whether the allegations relied upon were established by cogent evidence and recognised that conduct which, even if assumed to have occurred to some extent, may fall within the ordinary wear and tear of married life unless it crosses the requisite threshold of matrimonial cruelty.

26. The Madras High Court has recently reiterated the same approach in ***T. Sivakumar v. D. Narmadha*, C.M.A.Nos.1009 and 1011 of 2023**, decided on 04.06.2025, observing that disputes do not by themselves mean cruelty and that ordinary wear and tear and differences of opinion in matrimonial life cannot be elevated into a ground for divorce in the absence of conduct of the requisite degree and effect.



27. Applying the above principles to the present case, the allegations concerning washing clothes, forcing to drive car during the first Deepavali, telephone communication with parents, the naming of the child and the disagreement regarding the presence at family functions cannot, either individually or cumulatively on the evidence available, be treated as grave and weighty matrimonial cruelty. The learned Family Court was justified in examining these incidents in the context of the actual matrimonial life of the parties.

28. Of considerable significance is the admitted circumstance noticed by the trial court that the parties lived together at Bangalore for about seven months and that their life during that period was substantially peaceful. This circumstance materially weakens the attempt to portray the entire matrimonial relationship as having been continuously hostile from the inception.

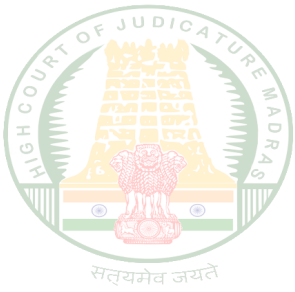
29. The evidence further shows that the substantial friction arose around the husband's parents and the wife's relationship with them. The wife, on the other hand, attributed the discord to the husband's excessive dependence upon his parents and their interference in day-to-day matrimonial affairs. Thus, the record discloses a family dispute in which the parents became central to the



disagreement. A matrimonial court cannot automatically convert every disagreement between a spouse and the parents-in-law into cruelty committed by the spouse against the other spouse.

30. The more serious allegation that the husband's parents were driven away from the wife's parental home and that the paternal grandparents were deliberately excluded from the child's life was not supported by direct evidence from the persons who allegedly suffered the conduct. P.W.2 was admittedly not an eyewitness. The learned Family Court was therefore justified in attaching limited evidentiary value to that allegation. The burden remained upon the husband to establish the acts constituting cruelty.

31. The issue relating to jewels and other belongings also cannot be used as an additional circumstance of cruelty merely because competing claims have been raised. The trial record records the rival assertions regarding the jewellery and household articles, but the present appellate proceedings are not the appropriate forum to determine independent claims for recovery or return of such articles, particularly when D.V.C.No.47 of 2022 is pending before the competent Mahila Court at Nagercoil. Those claims may be decided in the appropriate proceedings on the evidence placed therein.



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32. On the cumulative appreciation of the entire evidence, this Court is unable to find a sustained course of conduct of such gravity as would satisfy the legal threshold of mental cruelty. The existence of matrimonial discord and prolonged separation cannot, by themselves, supply the missing proof of cruelty.

33. As regards desertion, the statutory ingredients require not merely physical separation but separation accompanied by the necessary intention to bring cohabitation permanently to an end, without reasonable cause. In the present case, the husband left for Germany shortly after the birth of the child and remained there for employment. The evidence noticed by the Family Court further shows that communication between the parties continued and that attempts at reconciliation were made through the maternal uncle. The wife's case throughout has been that she was willing to resume matrimonial life.

34. The fact that the wife remained at her parental home while the husband was abroad, particularly when she was caring for the minor child, cannot by itself establish desertion. The subsequent period also has to be



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examined in the light of the parties' rival conduct, the attempts at reunion and the wife's stated willingness to return. The approach to the Nagercoil Police Station for reunion is a circumstance consistent with her assertion that she desired restoration of the matrimonial relationship.

35. The husband's petition for divorce was presented on 10.06.2019. The trial court noticed that the husband had not established a clear and complete statutory period of desertion in the manner pleaded, particularly in view of his own absence abroad and the chronology disclosed in his cross-examination. The finding that desertion was not established is therefore not shown to be perverse or contrary to the evidence.

36. The wife consistently pleaded and deposed that she was ready and willing to resume matrimonial life. Her conduct in approaching the Nagercoil Police Station for reunion, the attempts made through relatives and the absence of satisfactory proof that she had formed a settled intention to permanently abandon the marriage were relevant circumstances considered by the Family Court.

37. The husband, having failed to establish cruelty or desertion, cannot



obtain dissolution of marriage merely from the fact of physical separation. The decree for restitution of conjugal rights was founded upon the Family Court's appreciation of the parties' conduct and the wife's willingness to resume matrimonial life. No perversity or material illegality has been demonstrated warranting appellate interference.

38. This Court is also mindful that the presence of a minor child is an important circumstance, though it cannot by itself determine the statutory rights of the spouses. The Court must ultimately decide the matrimonial reliefs on the evidence and the legal requirements under the Hindu Marriage Act. In the present case, the evidence does not establish the requisite cruelty or desertion.

39. On an overall assessment, the material on record discloses disagreements and family friction, particularly involving the husband's parents and the wife's relationship with them, rather than a sustained course of grave matrimonial misconduct by the wife towards the husband. The normal wear and tear of matrimonial life, occasional quarrels, differences regarding household matters, disagreement in travel, communication with parents and family functions cannot be elevated into a sufficient ground for dissolution of marriage unless the conduct crosses the legally recognised threshold of cruelty. The



present evidence does not cross that threshold.

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40. It is therefore not necessary for this Court to enter into or prejudge the independent issues concerning jewels, household articles or other belongings, including any claim for their recovery or return, which may appropriately be decided in D.V.C.No.47 of 2022 or in any other competent proceeding in accordance with law.

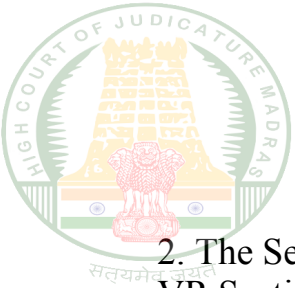
41. In the result, C.M.A.(MD) Nos.993 and 994 of 2022 are dismissed, confirming the Common Order dated 08.08.2022 passed by the learned Judge, Family Court, Tirunelveli, in H.M.O.P.No.166 of 2019 and H.M.O.P.No.31 of 2021. The decree granting restitution of conjugal rights in favour of the respondent/wife is consequently confirmed. No Costs. Consequently, connected miscellaneous petitions are closed.

**(G.R.S., J.) (M.D.S.,J.)**  
**25.09.2026**

NCC:Yes/No  
Index:Yes/No  
PJJ

To  
1.The Judge,Family Court,Tirunelveli.

17/18



2. The Section Officer,  
VR Section, Madurai Bench of Madras High Court, Madurai.

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**G.R.SWAMINATHAN, J.  
AND  
M.D.SUMATHI, J.**

PJL

**Predelivery Judgment made in  
CMA(MD)Nos.993 and 994 of 2022**

**25.09.2026**