

Madras High Court

R.Vishwanathan @ Suresh vs V.Meenakshi

C.M.A.No.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on Judgment Pronounced on

10.03.2021/30.03.2021 26.04.2021

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

and

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

CMA No.3513 of 2017

R.Vishwanathan @ Suresh

... Appellant

..VS..

V.Meenakshi

... Respondent

This Civil Miscellaneous Appeal is filed under Section 19 Family Court's Act, 1984 against the order and decretal order date 02.04.2009 passed in O.P.No.756 of 2004 on the file of I Additional Principal Judge, I Additional Family Court, Chennai.

For Appellant	:	Mr.A.Palaniappan for M/s.V.Viswanathan
For Respondent	:	M/s.G.Gokulavani

JUDGMENT

<https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 (Judgment of the Court was delivered by G.CHANDRASEKHARAN, J.) This Civil Miscellaneous Appeal is preferred against the order passed in O.P.No.756 of 2004 on the file of I Additional Principal Judge, I Additional Family Court, Chennai.

2. The case of the parties, in brief, is as follows:

Appellant as a petitioner filed a petition under Section 13(1)(i-a) and 26 of Hindu Marriage Act, 1955 against the respondent seeking divorce and custody of minor son. The marriage between appellant and respondent was solemnized on 05.04.2001. After the marriage, they lived in the house of appellant at Chennai. Appellant had shown great love and affection to the respondent and did

everything to make the respondent happy and comfortable in the matrimonial home. However, respondent was more concerned about her parents and her brother than the appellant and his parents. She did not like the appellant being attached to his parents and living together with them as a joint family. She started showing indifferent and disrespectful behaviour towards the appellant and she informed the appellant in June 2001 that <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 she committed mistake by marrying him. She had also given wrong impression about the appellant and his parents to her parents and brother. Appellant was transferred to Tirupur and they shifted their residence to Tirupur on 14.09.2001. Respondent's father and brother abused appellant's parents alleging that the respondent was being treated like a prisoner; appellant was not taking necessary steps to get her transferred to his place of work; appellant was preventing the respondent from serving him food and restraining her from making phone calls. Respondent enquired at the appellant's place of work as to whether he was on duty or on leave, when he was on official work. A boy was born to them on 21.02.2002. Respondent and her parents did not inform the appellant about the birth of son. During the naming ceremony of the child, respondent and her family ignored the appellant and his parents. Respondent attached undue importance to her employment, when she actually made the appellant and his parents to believe that she valued family life above her employment and she will quit her employment after marriage or child birth. Respondent behaved violently by banging her head against the wall and throwing things in the house. She threatened <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 the appellant that she would jump from the balcony of the second floor and would lodge a false complaint with the police. On 06.10.2002, respondent's brother came to appellant's house at Chennai and behaved brutally with appellant's parents. He used ugly, filthy and unprintable language against appellant's father. Respondent was simply watching the incident without trying to discipline her brother. On 25.10.2002, parents of respondent came to Tirupur and took the respondent and child to Sattur on 26.10.2002, without discussing the matter with the appellant to join her work at Sattur. Appellant is a Chief Manager and he did not require the respondent to work at the cost of family life, in general and in the interest of child, in particular. Respondent made her uncle to write obnoxious letter to appellant's father with false, frivolous allegations. When the appellant took up this matter over phone with her on 17.03.2003, she exhibited her arrogance and readiness for divorce. Appellant made last ditch efforts between 19.05.2003 and 22.05.2003 to bring the respondent to matrimonial home, but to no avail. Without any option, appellant issued a lawyer's notice dated 21.08.2003 and that was replied by respondent on 29.09.2003. Appellant sent a rejoinder on <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 15.11.2003. It is no more possible to continue the marital life with respondent. In the said circumstances, this petition is filed for the relief of divorce and custody of the minor son.

3. The respondent denied all the allegations made in the petition and contended that it is normal for any woman entering the matrimonial home to have some initial adjustmental problem and that was what had actually happened with the respondent. However, it is false to allege that she did not respect the appellant and his parents. Respondent was brought up in a joint family and she knew the virtues of living in a joint family. Appellant's parents teased the respondent on some imaginary lapses during the marriage ceremony. They castigated respondent's father as 'OJOSI' i.e., "a person good for nothing". Respondent tolerated this and never reacted. Appellant never made any sincere attempt to get the respondent transferred to Chennai. Appellant and respondent lived in Tirupur till

December 2001 and she left to her parental house at Ambasamudram for delivery of the child. Respondent's parents never disregarded appellant or his parents. Appellant's mother [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) interfered in everything and she denied the respondent the opportunity to perform her rightful duty to her husband. Appellant remained a mute spectator. It is true that the respondent enquired at the work place of appellant as to whether he was on duty or leave. The reason was that "Thalai Deepavali" for the appellant and respondent fell on 14.11.2001 and appellant assured her that he would join her on 13.11.2001. Since he did not come, respondent phoned to Chennai to ascertain his coming. Appellant's mother informed her that appellant had gone to Debt Recovery Tribunal (DRT) on some official duty. At that time, she could hear her husband's (appellant's) voice. Therefore, she called his office at Tirupur and she was informed that appellant was on leave between 12.11.2001 to 15.11.2001 and informed his Manager that he was leaving for Ambasamudram for "Thalai Deepavali". Ultimately the appellant did not attend "Thalai Deepavali" under the dictates of his mother. Appellant's mother had spoken in a language that was not expected from a lady of her stature. The boy was born on 21.02.2002 at 11.30 p.m. Respondent's father informed the same to appellant's father on the same night and again by 6.30 a.m next morning. Her quitting with [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) employment was never discussed. In fact, one of the main reasons for finalising the marriage between the appellant and respondent was her employment. In October 2002, when her employer wrote a letter to her either to join or face disciplinary proceedings, appellant advised her to join duty and arranged for her trip. It was also informed to appellant's parents and they gave their consent. Appellant was controlled by his parents from Chennai. In fact, the appellant once told her that he felt like pushing her down from the balcony. She was tortured and taunted everyday and she tolerated these things only for the child. Appellant did not bother to celebrate his son's first birthday. Letter informing the ear-boring ceremony and tonsuring functions and photographs of the child were returned by the appellant. As a result, first birthday of the child was not celebrated. Whatever happened on 06.10.2002 had happened because of sudden provocation and indecent language used by appellant's father against respondent's brother. Respondent's father expressed his apology for the incident. Respondent has great faith in marital life and marital institution and she prays to preserve and prosper the marital life between her and the appellant. Whenever she tried to [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) speak with the appellant, he was not responding. Respondent is not ready for granting divorce to the appellant. Appellant had never taken care to see the child. Therefore, respondent prayed for the dismissal of this petition.

4. During trial, P.Ws.1 and 2 were examined on the side of appellant and Exs.P1 to P26 were marked. R.Ws.1 and 2 were examined on the side of respondent and Exs.R1 to R9 were marked. On considering the oral and documentary evidence, learned I Additional Principal Judge found that the appellant is not entitled for the prayer of dissolution of marriage and dismissed the claim for divorce. At the same time, appellant was permitted to see the child on every Sunday from 10.00 a.m to 01.00 p.m at a mutually agreed place, without detrimental to the education of the child. Against the said order, this appeal has been filed by the appellant.

5. During the pendency of appeal, appellant filed CMP No.2559 of 2021 to receive additional documents. After hearing the counsel for both the parties, CMP was allowed and the documents are [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) received as additional evidence and

marked as Exs.P.27 to P.33.

6. Learned counsel for the appellant submitted that inspite of sufficient oral and documentary evidence and proof of the allegations of cruelty committed against the appellant by the respondent, learned I Additional Family Court Judge failed to properly appreciate the evidence. It is proved through the evidence and admissions made by the respondent in her counter and through letters about the behaviour of respondent's brother on 06.10.2002 in using abusive and vulgar language against the parents of the appellant; the writing of letters by respondent's uncle with false, untenable and baseless allegations against the appellant's parents. Learned I Additional Principal/Family Court Judge failed to take note of these instances, which really amounted to cruelty. Learned I Additional Principal/Family Court Judge failed to note the instances of cruelty committed by the respondent, her parents and brother and the proof by the appellant through oral and documentary evidence. Without considering the evidence and proof in support of the allegations made against the respondent in proper perspective, learned I Additional <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 Principal/Family Court Judge has wrongly dismissed the petition. The parties are living separately from the year 2002 and the marriage between them is irretrievably broken. Therefore, learned counsel for the appellant prayed for setting aside the order of learned I Additional Principal/Family Court Judge and for allowing the petition by granting divorce and custody of minor son.

7. In response, learned counsel for the respondent submitted that it was not the respondent, her parents and her brother who were indifferent and disrespectful towards the appellant and his parents, but it was only the appellant and his parents, who were showing indifferent attitude and disrespect to the respondent's parents. Appellant's mother was treating the respondent with contempt. Of course, there were some initial hiccup at the start of marital life, which are trivial in nature. However, appellant's parents and appellant made even the trivial ones as big issues and created lot of disharmony in marital life between the appellant and respondent. The appellant and his parents are egoistrial personalities attaching too much importance to protocol and expected <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 that the respondent and her parents have to be submissive and subservient to them always. Even the minutest lapse in observing the protocol would lead to the appellant and his parents neglecting the respondent. Their egoistic attitude was the main reason for this mess. The allegations made against the respondent's family members are not supported by any acceptable evidence. Therefore, learned I Additional Principal/Family Court Judge has rightly dismissed the prayer for divorce and the learned counsel appearing for the respondent prayed for the dismissal of this appeal.

8. Points for consideration in this appeal is:-

1) Whether the finding of trial Court that the appellant has not proved the cruelty on the part of his wife and therefore, not entitled for divorce is correct ?

2) Whether the finding of trial Court that the appellant is not entitled for the custody of child is correct ?

3) To what relief the parties are entitled ?

9. Points 1 to 3:

As narrated elaborately in the pleadings part, it is seen that the [https://www.mhc.tn.gov.in/judis/C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) appellant and respondent both were working in State Bank of India in different capacities and in different branches at the time of marriage. The appellant was holding a managerial position and the respondent was holding clerical position at the time of marriage. It appears that the respondent had taken steps to get her posting transferred to Chennai. the appellant's workplace, by sending representation to concerned authorities. However, her transfer request was not considered favourably until the parties got separated. Initially they started living at the residence of appellant at Chennai with the parents of appellant and thereafter, the appellant was transferred to Tirupur and there, they lived together as a separate family. From Tirupur respondent went to Ambasamudram for delivery. After the respondent went to Ambasamudram for delivery, they were not living together. It is seen from the petition, the appellant alleged the following instances of mental cruelty inflicted by the respondent and her family members against the appellant and his family members:-

1) Respondent was more concerned about her parents and brother than the appellant.

[https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017)

2) She did not like the appellant being attached to his parents or living together with them as a joint family.

3) She was disrespectful towards the appellant and told him that she committed a mistake by marrying him.

4) She gave a wrong impression about the appellant to her parents and brother. Her parents had no regard or respect to the appellant and his parents.

5) Her father and brother shouted abuse at the appellants parents.

6) She enquired at his workplace as to whether he was on duty or on leave when he was on official work.

7) She refused to serve food to him and spoke in a language that was quite unbecoming of a wife.

8) She did not inform the birth of the baby.

9) She gave undue importance to her employment.

10) She behaved violently by banging her head against the wall and throwing things in the house.

11) She threatened that she would jump from the balcony and [https://www.mhc.tn.gov.in/judis/C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) give false complaint against the appellant.

12) She and her parents spread falsehood among their relative about the appellant and his parents.

13) On 06.10.2002, respondent's brother behaved rudely with the appellant's parents and hurled filthy, unprintable language against them and the respondent was the silent spectator during this incident.

14) She had no inclination for doing daily chores.

15) She deserted the appellant from 26.10.2002.

10. From the oral and documentary evidence produced in this case, it is seen that the appellant and respondent are highly educated. It is seen from Exs.P2, P3 and P5 to P17 that there were exchange of letters between appellant and respondent, respondent and appellant's father, appellant's father to respondent's father. These letters clearly demonstrate that there were misunderstandings between the parties from the time of marriage till the parties got separated. That apart, there are letters by respondent's uncle to the appellant's father, which are marked as Exs.P18 and P21 and reply to these letters by appellant and his father, [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) which are marked as Exs.P19, P20, P22 and P23. These letters also show the misunderstandings between the appellant, his parents on one side, respondent and her parents on other side existed even from the time of marriage. Instead of trading charges against each other in these letters, had they sat together and discussed the issues, which appeared trivial, blown out of proportion due to improper handling, the dispute would not to have come to this far. It is seen from the letters that both the father of appellant and father of respondent are very orthodox, egoistic and protocol conscious persons. It is pertinent here to refer the gist of the letters exchanged between the parties to understand the origin and development of the dispute.

11. On 01.11.2001, respondent wrote Ex.P2-letter to appellant's parents. She sought apology for hurting the feelings of appellant's parents in this letter. Again, she wrote Ex.P3-letter on 31.12.2001. This letter also shows that there were misunderstandings between the respondent and her husband and parents-in-law and she pleaded for cooperation of her parents-in-law to set right the misunderstanding. [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) Ex.P5 is letter dated 18.04.2002 written by the respondent to appellant, in which she expressed about the prevailing misunderstanding between both the families and her willingness to forget the past, her longing for love and affection from her husband, the appellant herein. Ex.P6 is letter dated 27.04.2002 by the respondent to her parents-in-law. Here again, she expressed apology for the past and requested to forget the past and revive the happy relationship between the families. In response to the letter dated 18.04.2002, appellant sent a reply Ex.P7 on 30.04.2002. This letter shows that how the appellant is a proud, egoistic, authoritative, autocratic and protocol conscious person.

12. It appears that there was an incident on 06.10.2002 at the residence of appellant's parents at Chennai. Respondent's brother said to have behaved rudely with appellant's parents. Respondent's

father wrote Ex.P9-letter dated 07.10.2002 regretting the things that had happened on Sunday last ie., on 06.10.2002. In fact, respondent's father profusely apologized for all that had happened. There was already simmering dispute between the appellant and respondent and their respective family members. That simmering dispute got aggravated further due to the abusive conduct of respondent's brother on 06.10.2002. It was amply reflected in Ex.P10- letter addressed by appellant's father to respondent's father, in which he narrated the abusive conduct and words used by respondent's brother against him and his wife. To this letter, respondent's father sent Ex.P11- reply once again apologizing for the incident and seeking pardon for his son's temperamental behaviour. Both the sampanthies were writing letters and reply letters finding fault with each other and trading charges against each other, instead of sitting across a table and sort out the problems.

13. Then came Ex.P18-letter from the uncle of respondent to appellant's father. It appears that this uncle Mr.S.K.Sundaram, who was also examined as PW.2, was instrumental in getting the marriage proposal between the appellant and respondent materialised. He sent a detailed letter, making various allegations starting from the time of marriage till the time of writing letter about the various unpleasant incidents involving the appellant's parents, the demand of dowry e.t.c and harassment caused to the respondent. Appellant's father sent Ex.P19- letter denying all the charges. Appellant's father sent Ex.P20- letter making detailed narration of the incident that had happened from the time of marriage till the time of reply denying all the charges made against him and his family members. Again RW.2-S.K.Sundaram sent Ex.P21-letter and it was replied by Ex.P22-letter by appellant's father. Finally, appellant sent Ex.P23-letter to RW.2 S.K.Sundaram denying all the charges made against him and his parents.

14. Perusal of these letters clearly shows that even from the time of marriage between the appellant and respondent, there were issues with regard to the provision of dowry and other seer items. Later, there arose minor misunderstandings between the respondent and appellant's parents, each trading charges against each other. Appellant stated that his wife had not cared or given respect to him or his parents, rather she was more concerned about her parents, her brother and her employment. Even after they started to live separately at Tirupur, these disputes continued. The relationship between them was not cordial. After the respondent went to her parents' house at Ambasamudram for delivery, the gap widened and became permanent. It was followed by issuance of Ex.P.24 legal notice by the appellant, Ex.P.25 reply by the respondent, Ex.P.26 response and the institution of this divorce petition.

15. Perusal of oral evidence of PW.1 shows that appellant has reiterated the allegations, made against the respondent and her family members in the petition, in his proof affidavit and he was supported by P.W.2. However when the appellant was tested in the cross examination, he admitted that he promised to come to Ambasamudram for celebrating "Thalai Deepavali" i.e., the first Deepavali after marriage. It is his evidence that he knew from his boss that the respondent contacted his office on 13.11.2001 through phone and she was intimated that appellant was on leave from 13.11.2001 to 15.11.2001 to go to Ambasamudram to celebrate "Thalai Deepavali". It is his further admission that he did not go to Delhi for training and was with his parents at Chennai from

13.11.2001 to 15.11.2001. Two things are clear from this evidence. (1) The respondent contacted appellant's office just to check whether he <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 had gone for any training when he failed to come to Ambasamudram on 13.11.2001 to celebrate "Thalai Deepavali" as promised and not for any other purpose. (2) Appellant had deliberately avoided to go to celebrate "Thalai Deepavali" with the respondent at Ambasamudram. Therefore, appellant's claim that respondent's enquiry in his office caused defame and embarrassment to him and it is one of the grounds for seeking divorce, has to be rejected as not a valid ground.

16. He admitted that he was in Delhi attending a training on 21.02.2002 when the boy was born. When he was asked whether he informed the respondent that he was going to Delhi outskirts for training and could not be directly reached; asked the respondent to inform the birth of the child to his parents and the receptionist and gave the contact number of the receptionist, he replied that he did not say that he could not be contacted directly, but admitted other suggestions put to him. The case of the respondent is that the appellant was not reachable since he was in training in Delhi and therefore, his father was informed about the birth of the the child through phone. It is his evidence that he spoke to <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 the father of the respondent next day after the birth of his son through the phone available in the hospital. The boy was born through cesarean operation. Those days, not every one has the wherewithal to own cell phone. Therefore, we can not expect the respondent, who underwent cesarean operation to come to telephone booth and make a call to the appellant to inform about the birth of the son. It is clear that the information regarding the birth of his son was informed to him and then he enquired about the birth of the child with the respondent's father.

17. Appellant admitted that Ex.P12 letter informing that respondent's father would come to Tiruppur to take respondent was received by his father and respondent started to Sattur along with her parents on 26.2.2002. This admission and EX.P.5 letter show that the appellant and his parents were duly intimated about respondent joining duty at Sattur, after the completion of maternity leave. He admitted that Ex.R1 returned postal cover with turmeric stain was addressed to his father and it is unopened. When it was suggested to him that this cover contained a letter inviting appellant's father for the ear-boring ceremony <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 of his son and his father deliberately returned the cover, he denied the suggestion. He admitted that Ex.R2 letter sent by the respondent to him was returned as refused.

18. It is his further admission that when the respondent sent a photo of his son, after seeing the photo, he returned the photo to the respondent. The reason was that the respondent did not attach any letter with the photo; she did not speak properly during telephonic conversation and the child was in the hands of the parents of respondents instead of his parents. He admitted that respondent, their son and her parents had come on 14.05.2006 to enquire about the death of his sister's husband. He stated that he did not go to Sattur to meet the respondent and the child after they had gone to Sattur.

19. PW.2 was the superior officer of the appellant when he was working in Tiruppur. He was examined to speak about the conciliatory efforts taken by him to unite the appellant and respondent and his visit to Sattur on 24.12.2003 to discuss the issue with respondent and her parents. It is his

evidence that the respondent and her parents were not <https://www.mhc.tn.gov.in/judis/C.M.A.No.3513> of 2017 cooperative in his peace efforts, rather they showed very arrogant and stubborn attitude and they vowed to initiate false criminal proceedings against the appellant. As a result, his efforts to find an amicable settlement to the problem failed. Though respondent admitted the visit by PW.2 to Sattur, denied his evidence that the respondent and her parents were not cooperative and they vowed to initiate false criminal proceedings. In fact, respondent was prepared to meet the appellant to discuss the issues. PW.2 after having promised to take steps for a meeting between them, did not do so.

20. It is seen from the evidence of PW.2 that he knew about the issues between the appellant and respondent through appellant and he did not know many details with regard to her employment. He admitted that he was not aware of the fact that the respondent was on leave on loss of pay for 1½ years after the marriage and she left to Sattur to join duty after receiving a letter from the head office. He stated that he did not get to know the full details with regard to the dispute between the appellant and respondent when he met her at Sattur on 24.12.2003. Admittedly, there <https://www.mhc.tn.gov.in/judis/C.M.A.No.3513> of 2017 was no legal proceeding pending between the appellant and respondent on 24.12.2003. When that be the case, the evidence of PW.2 that the respondent and her parents told him that they would go to any length in delaying the legal process and cause further frustration and mental agony to appellant and his parents, can not be believed. Only in 2013, the respondent filed a maintenance case in M.C.No.111/2013 claiming maintenance for the minor son. She has not initiated any other criminal proceedings against the appellant so far. Therefore, his evidence that the respondent's father, supported by respondent, threatened that he would foist false case of demand of dowry and harassment against the appellant and his parents, can not be believed. It is quite obvious from his evidence that he heard only one side of the story and not made an effort to hear the story from the other side and giving evidence with half baked information. His evidence is one sided and therefore, can not be believed.

21. It is seen from the evidence of the respondent that she denied all the suggestions put to her. Though she stated that Ex.P2 letter was written by her as instructed by the appellant and stated that she did <https://www.mhc.tn.gov.in/judis/C.M.A.No.3513> of 2017 not remember about the contents of EX.P2 and EX.P3 letters, these letters are available for the perusal of this Court. The reading of these letters shows that these letters were clearly written by her seeking apology for her conduct. Therefore, her efforts to disown the contents of these letters can not succeed. She took contrary stand with regard to the incident involving her brother on 06.10.2002. At one place, she denied the incident and in another place she stated that her brother would have behaved like that for the reason that he was ill-treated by the appellant's parents. It is seen from the evidence produced, both the parties try to exaggerate the events, disown and conceal facts. It is the duty of the Court to separate grain from chaff. RW.2 spoke about the circumstance, under which, he was forced to write letters to appellant's father.

22. The analysis of oral and documentary evidence produced in this case shows that the allegations, (1) Respondent was more concerned about her parents and brother than the appellant; (2) She did not like the appellant being attached to his parents or living together with them as a joint family; (3) She was disrespectful towards the appellant and told him <https://www.mhc.tn.gov.in/judis/>

C.M.A.No.3513 of 2017 that she committed a mistake by marrying him; (4) She gave a wrong impression about the appellant to her parents and brother. Her parents had no regard or respect to the appellant and his parents; (5) Her father and brother shouted abuse at the appellants parents; (6) She refused to serve food to him and spoke in a language that was quite unbecoming of a wife; (7) She behaved violently by banging her head against the wall and throwing things in the house; (8) She threatened that she would jump from the balcony and give false complaint against the appellant; (9) She and her parents spread falsehood among their relative about the appellant and his parents; (10) She had no inclination for doing daily chores; are usual allegations we find in a divorce petition filed by a husband against the wife on the ground of cruelty with a custom modification to suit the case of the appellant. Except the oral testimony of the appellant and of course, the apology sought by the respondent from appellant and the appellant's parents in Exs.P2, P3 and P5 letters, there is no corroborative evidence available to support the case of the appellant. Even in the letters written by the respondent, there is no specific mention about what sort of mistakes committed by her.

[https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017)

23. The relevant portion from Ex.P2-letter addressed to appellant's parents by the respondent is extracted hereunder.

"Sorry for hurting you both. Believe me my intentions was not that. I thought I could express my genuine feelings and that is what I did. May be the time of expression was wrong and in the course, I have caused discomfort and disrespect to you both. I seek your forgiveness. Will you?. When are you both coming to Tiruppur? Please do it at your earliest so that we can all together go to Ambasamudram from here for Deepavali. We must all be happy again and I will never give room for any more misunderstandings"

24. In EX.P3 letter (translated from vernacular language) addressed to appellant's parents, respondent expressed that, she came to know about the visit of appellant to Chennai during Christmas when she spoke to him and knew that he was disappointed against her for not enquiring about him with his mother when she spoke to his mother on 24.01.2001. She also expressed her unhappiness that appellant's mother had not informed her about the appellant's availability at Chennai on [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) 24.01.2001. Had she informed about the availability of the appellant at Chennai, she would have enquired about the appellant and there was no cause for appellant feeling displeasure against her over not enquiring about him. She requested the help of the appellant's parents to set right the situation. She expressed that, even if she committed any mistake, she is prepared to correct herself when pointed out by them and take their advice in right sense. Finally she expressed that she had no powers to change the past but prayed for good things in future".

25. The excerpts of Ex.P.5, letter dated 18.04.2002 addressed to the appellant by the respondent are as follows:-

“Take care of your health. Get your mind relaxed. Your happiness is important to all of us....

You are the only son-in-law of my parents. They wanted me to convey their blessings always. But their only grievance is that as a only Son-in-Law, you are not showing love and affection expected from the Son-in-Law....

You were angry with me for my father not wishing you on April 5th. However, when my father offered wishes to you during previous occasions, you were not enquiring about [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) him and he was disappointed about that....

Our marriage is not celebrated at the right age and it is a late marriage. We try to forget the past as bad dream and try to be happy in future....

Whether you like or not, I have to live with you. I have nobody else except you. But your stubbornness and neglect causes agony to me and my parents....

Don't you have the feelings to see our son Varun... I married with you with lot of hope. But you said, your parents are only important to you and not your wife and son, even if it meant separation in marriage life.... Even when you came here, you had not enquired about me....

The world will respect me on the basis of the respect, you give to me. ...

I have no love, affection and care from you from June 2001. I fondly hope that at least hereafter, I get this love and affection from you....

Whatever mistakes committed by me, disrespect shown to you, kindly forgive me. I need you. My son needs father.... I never thought of separating you from the family. Both [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) families should live happily.

My maternity leave expires on June 5th. The Branch Manager informed me that he received a letter from the Zonal Office about my leave of absence. I had to report to duty on June 6th. Kindly advise me....

Is it possible for you to come to see me. Even while writing this letter, I am weeping. ..

When you come here, express your feelings to my father openly. Open conversation will solve all the problems.... You are the only person I am expecting love, affection and care. Don't be angry with me.

I had been longing to be with you on April 5th. At least, hereafter, I should be with you on good and important days.”

26. In response to this letter, appellant sent a letter to the respondent which was marked as Ex.P7. Some of the portions, which are relevant for the consideration of this case are extracted below:

“I fail to understand as to why you all have not made any attempt to go those extra miles to make amend [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) for all that you all have done! Instead, you all have been very consistent in making things change from good to bad to worse. It is difficult to build relationship and even more difficult to sustain the same. On the other hand, it does not require much effort to break ties, especially the budding one. It is only unfortunate that the people appear to continue to resort to the latter (effortless) method....

As far your parents not bothering to greet their only son-in-law (SIL) on the occasion of his first wedding anniversary (FWA), you have only tried to justify the unjustifiable as has been the practice with you all. That no SIL with self-respect would expect discourteous mother-in-law (MIL) (who looks the other way when he takes leave of her at the end of a function) to greet him on his FWA is a different matter! Not to speak of your father who has been very regular in spoiling the party right from the very beginning itself!! I wonder as to how often your father has phoned me up to greet or speak!!! Even during those very few occasions when we have spoken to each other over phone (or in person), I don't think I have ever thrown etiquette to wind (unlike you) inspite of the ways he has conducted himself so far.....

People from the calling end only should exhibit the [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) enthusiasm befitting the occasion in trying to speak to the called person and every other kith and kin present at the called persons. Hence, at the material time, it can never be vice-versa and more so, when you say that your father's pension is his 'only' source of income, it could not be out of place to mention here that there are many others who have retired from service and are not fortunate enough to get a decent monthly pension with periodic upward revisions. It is basically a question of poverty in mind (and not purse), at your end , I would say....

For somebody who is terribly preoccupied at his office, 18 hrs of travel on the road for a few hours of stay at the FIL's place to see his wife and new born baby is neither practical nor advisable (on account of the tediousness involved). I, for one, don't believe in flaunting love and affection in public either. Further, the atmosphere at your place is not conducive enough as also the persisting indifference of you all. Let me ask you as to what concrete steps you all have taken to mitigate the mental agony which me and my parents are passing through for the last 10 months or so. You have said that you have married with a lot of expectations. I wonder as to what more could a girl getting married very late ask for other than attaining motherhood in the shortest possible [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) time!!

When I myself as well as my parents have not come out of the trauma caused by you all, I don't have to take the trouble of applying leave to come over to a place to witness your father attending to his bedridden father and your mother rendering service. ...

Let me conclude by repeating that respect, love and affection (towards my parents) alone from you all will undo all your misdeeds. I have categorically stated this earlier also to you as well as your

father. Remember! you are a DIL of a respected, loving and close knit family, first!, And your role as a wife comes next!!. Hence, if you all realize your mistakes and go those extra miles, things are bound to change for the better. Or else, if you all continue to make discordant note spurred by false prestige and misplaced priorities, the whole world will hold you all squarely responsible for the consequences which may unfold."

27. One thing is clearly evident from these letters. That is, the respondent felt terribly sorry for her actions, which hurt the feelings of appellants' parents and appellant and profusely pleaded for apology. On [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) the contrary, the appellant expressed a high degree of arrogance and unforgiving attitude. His letter is full of sarcasm and disdain demonstrating his chauvinistic attitude. He wanted his wife and her parents to treat him and his parents with utmost respect and servitude. He cited 18 hours travel as a reason for not visiting to see his son. A responsible father would not say the travel time as a reason for not seeing the new born baby. His comments that "what more a girl getting married very late ask for other than attaining motherhood in the shortest possible time", "I don't have to take the trouble of applying leave to come over to a place to witness your father attending to his bedridden father and your mother rendering service" are not in good taste. It is his categorical statement that respondent is a daughter-in-law of a respected, loving and close knit family first and her role as a wife comes next. This statement shows his ultimate arrogance. This letter shows that he took an uncompromising position and wanted to end the marriage, though the respondent was genuinely seeking apology to the appellant, her parents for some of her actions, at the initial stage of marriage. But the appellant was unrelenting.

[https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017)

28. The allegation that the respondent attached too much importance to her job than the family life, is liable to be rejected for the reason that it is the admitted case of the appellant that respondent was also working in the bank at the time of marriage. Now it is claimed by the appellant that there was an understanding reached between the appellant and respondent that the respondent would resign her job after marriage or after birth of a child, which is stoutly denied by the respondent and RW.2, who arranged the marriage. Asking a wife to resign her job, in this era of women empowerment, is out of sorts. Therefore, this allegation is also liable to be rejected.

29. One thing which can not be approved is the conduct of the respondent's brother on 06.10.2002 when he behaved rudely and used vulgar language against the parents of the appellant. This incident and Exs.P18 and P21 letters written by respondent's uncle further escalated the issues between the spouses. The grievance of the appellant is that not only the respondent's brother abused and behaved rudely with the appellant's parents, but the respondent remained a mute spectator during [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) the incident. However, it is the evidence of the respondent that whatever happened on 06.10.2002 was due to sudden provocation because of the use of indecent language by the appellant's parents about her father. It is possible to exchange filthy, abusive and unpleasant language in a heat of moment. It may also possible that appellant's parents had also used some foul language in the course of quarreling. What we have to consider is the previous and subsequent events connected with the incident. There were issues between the

appellant and respondent and their family members about the marital life of appellant and respondent. When it was about to reach the boiling point, the blood-brother got bit emotional and in the heat of moment, he appeared to have abused the appellant's parents. Subsequently, respondent's father addressed Exs.P9 and P11 letters to appellant's father profusely expressing apology for the conduct of his son and sought pardon. But, the appellant and his parents were not prepared to forgive and forget the incident.

30. Next incident is writing of Exs.P18 and P21 letters by RW.2, the respondent's uncle. The reading of these letters shows and sheds light [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) that the respondent was ill-treated by appellant's parents. It is no doubt that these letters had been written by RW.2 on the basis of information provided by the respondent and her parents. Though lot of allegations had been made against the appellant's parents in these letters, these allegations had not been specifically denied or challenged when RW.2 was cross examined. Only bald suggestions were made to RW.2 denying the contents of these letters. As a person responsible for arranging the marriage between the appellant and respondent and interested in the welfare of the respondent, he pointed about various demands made during the conduct of marriage and the instances of harassment meted out to the respondent subsequent to the marriage. In the absence of effective cross examination for discrediting or disbelieving the evidence of RW.2 with regard to the contents of EX.P18 and P21 letters, it has to be taken that the allegations made in EX.P18 and P21 letters are true.

31. The allegation that the respondent deserted the appellant on and from 26.10.2002 is denied by the respondent. It is the case of the respondent that she was on leave on loss of pay for more than 1½ years [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) after her marriage. She received a communication from the zonal office that unless she joins duty, disciplinary proceedings would be initiated against her. Only after receiving that communication she joined duty at Sattur. That too, after getting permission from the appellant and informing his parents. In EX.P5-letter she mentioned about the receipt of the letter from zonal office and sought his advice as to reporting to duty. The appellant responded through Ex.P7-letter stating as follows:-

“When the prospect of joining her husband along with new born baby should be the uppermost thing in a wife's mind, it is odd to note that she has thoughts about taking up again a lousy vocation amidst sadistic environment forgetting the difficulties involved in the logistics and also the importance of bringing up a baby!! What sort of a character are you? You may have to go in for SL on LOP (sick leave on loss of pay). More than my advise, it is what you are finally going to do that will have a lasting impact on your marital life”.

The tone and tenor of this letter shows that the appellant did not want the respondent to join duty after she sought his advice with regard to joining duty. As already stated, in this era of women empowerment and their right to employment, it is not legally correct for the appellant to ask his [https://www.mhc.tn.gov.in/judis/ C.M.A.No.3513 of 2017](https://www.mhc.tn.gov.in/judis/C.M.A.No.3513%20of%202017) wife to again go on sick leave on loss of pay and indicting to her that she should not continue in her employment. Subsequently, respondent joined her duty at Sattur and living there till she was transferred from there.

32. It is seen from Ex.P24-notice that the appellant has not required the respondent to join him, rather he sent this notice informing her that it is not possible for him to lead a peaceful matrimony and he wishes a divorce through a Court of law. This petition is also filed for divorce on the ground of cruelty and not on the ground of desertion. For maintaining a petition on the ground of desertion, it must be established that the respondent deserted the appellant for a continuous period of not less than two years immediately proceeding the presentation of the petition. That is not the case here. Wife staying in a different place for the sake of employment can not be construed as desertion. Therefore, this Court is of the considered opinion that the claim of the appellant that the respondent deserted him on and from 26.10.2002 has no legs to stand and deserved to be rejected outright and rejected accordingly.

33. The learned counsel for the appellant relied on the rulings for <https://www.mhc.tn.gov.in/judis/C.M.A.No.3513> of 2017 the proposition as to what amounts to “cruelty”; sending false complaints to the superior officers and other authorities, making defamatory allegations against the spouse constitute cruelty and that long separation and separate living points to irretrievable breakdown of marriage and it is a ground for granting divorce. It is further submitted by the learned counsel for the appellant that when the appellant was deputed to United States of America for an official assignment, the respondent sent Ex.P27- lawyer notice to the (1) Regional passport Officer, Chennai (2) The Immigration Officer, United States Embassy, Chennai and (3) The DMD and CDO, State Bank of India with a bad intention to spoil the opportunity and his career by stating about the pending maintenance case and that if the appellant leaves the shores of India, she may not get her gold jewels and silverware and her son will not get maintenance and requested these authorities not to clear his name to go to United States of America. This letter, according to learned counsel for the appellant, caused a lot of mental agony to the appellant and he had to resort to legal proceedings as evidenced from Ex.P29 to P32 to get the obstacle cleared and go to United States of America. This act of the respondent exhibited <https://www.mhc.tn.gov.in/judis/C.M.A.No.3513> of 2017 her evil mind and it constituted high degree of cruelty. In this regard, the learned counsel for the appellant relied on the rulings reported in 2103(5) SCC 226 (K.Srinivasa Rao v. D.A.Deepa), 2014 (16) SCC 34 (K.Srinivas v. K.Sunitha), 2016 (5) LW 701 (John Vincent v. Nancy), LL 2021 SC 117 (Joydeep Majumdar v. Bharti Jaiswal Majumdar).

34. However the learned counsel for the respondent submitted that the object behind sending Ex.P27-legal notice was not to harass or spoil the career prospects of the appellant, but only to safeguard the interest of the minor son and her interest. She was not aware whether the appellant was moving to United States of America on a temporary basis or permanent basis. Eversince the birth of minor son Varun, appellant had never paid a single paise towards his maintenance, schooling and other expenses. Only then, M.C.No.111/2013 came to be filed in 2013. The appellant has not come forward to return the jewelleryes and silverwares of the respondent. These circumstances necessitated the issuance of Ex.P27-notice. Nothing ill is said about the appellant in this notice. Only the pending maintenance case and the availability of respondent’s <https://www.mhc.tn.gov.in/judis/C.M.A.No.3513> of 2017 jewelleryes and the silverwares with the appellant was mentioned. Therefore, issuance of Ex.P27-legal notice can not, at any stretch of imagination, be considered as causing cruelty to the appellant.

35. The Supreme Court, in K.Srinivasa Rao .Vs. D.A.Deepa reported in 2013 (5) SCC 226 (cited supra) held that making unfounded indecent/defamatory allegations against the spouse or his/her relatives in pleadings, filing repeated false complaints or cases in court, issuing notices or news items which may have adverse impact on business prospects or job of spouse e.t.c, are illustrative cases of mental cruelty, which would warrant grant of divorce. It was a case where the wife filed false complaint against the husband and his family under section 498-A IPC in the Metropolitan Magistrate Court, Hyderabad and sent complaints to High Court, where the husband was working as Assistant Registrar.

36. In K.Srinivas .Vs. K.Sunitha reported in (2014) 16 SCC 34 (cited supra), the wife filed a criminal complaint against the husband and <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 his family members under sections 307 r/w 34, 148-A, 384, 324 IPC and sections 4 and 6 of Dowry Prohibition Act. The husband and seven of his family members were arrested and incarcerated. Subsequently they were acquitted from the criminal case. The Supreme Court found that wife had filed a false criminal complaint, and even one such complaint is sufficient to constitute matrimonial cruelty.

37. In John Vincent .Vs. Nancy reported in 2016 (5) LW 701 (cited supra), the husband was working as Sub-Inspector in the Central Reserve Police. The wife filed a false criminal complaint against the husband before All Women Police Station and sent several unfounded complaints to the higher authorities including the Hon'ble President of India and Hon'ble Prime Minister of India. Taking note of this, this court held that giving false complaint to the police and sending false complaints to the higher authorities would amount to causing mental cruelty to the husband entitling him to the grant of divorce on the ground of cruelty.

38. In Joydeep Majumdar .Vs. Bharti Jaiswal Majumdar, <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 reported in LL 2021 SC 117 (cited supra), the husband is an Army officer. The wife is holding a faculty position in a Government college. Following the estrangement, the husband initiated divorce proceedings. The wife had made several defamatory complaints to the husband's superiors in the Army, for which a court of inquiry was held by the army authorities against the husband. The wife had also sent complaints to other authorities like State Commission for Women and posted several defamatory materials on other platforms. The outcome is that the appellant's career and reputation suffered. The Supreme Court held that this is a definite case of cruelty inflicted by the wife against the husband.

39. Perusal of Ex.P27-legal notice shows that only the pendency of maintenance case and the availability of respondent's jewellerys and silverwares with the appellant was mentioned and nothing ill or defamatory about the appellant was mentioned in this notice. Admittedly, the appellant has not paid a single paise towards the maintenance, education and other expenses to his minor son from the date when the spouses are living separate till now. It is seen from Ex.P33 that only on <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 29.01.2019, appellant handed over the jewellerys and silverwares of the respondent to her. Under the circumstance when the maintenance case was pending and when the respondent's jewellerys and silverwares were available with the appellant, the sending of Ex.P27-legal notice can not be faulted. It can not be considered as

cruelty also. It is relevant to note here that the respondent has not initiated any other legal proceedings, civil or criminal, except the maintenance case, against the appellant or his parents. But in the cases referred above, the wife had given false criminal complaints against the husband and sent various complaints against the husband to higher authorities and others. That is not the case here. The facts and circumstances of the cases relied on by the learned counsel for the appellant are totally different from the facts and circumstances of this case. Therefore, this Court is of the considered view that the judgments relied on by the learned counsel for the proposition that sending false complaints to superior officers and other authorities would amount to cruelty are not applicable to the facts and circumstances of this case.

<https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017

40. The learned counsel for the appellant relied on the following rulings reported in 2005 (7) SCC 353 (Durga Prasanna Tripathy .Vs. Arundhati Tripathy), 2018 (3) CTC 31 (V.M.Jawahar Lal .Vs. K.A.Sheela), 2002 CJ SC 301 (G.V.N.Kameswara Rao .Vs. G.Jabilli), 2003 (1) MLJ 669, 2007 (2) SCC 263 (Rishikesh Sharma .Vs. Saroj Sharma), CDJ 2015 MHC 6392 (V.Rajagopalan .Vs. T.R.Parimala), and Civil Appeal No. 4696/2013 (K.Srinivas Kumar .Vs. R.Shametha) for the proposition that living separately for long years points to the fact that the marriage had broken irretrievably and it is no more possible for the spouses to live together again.

41. Leading case on this subject is Durga Prasanna Tripathy .Vs. Arundhati Tripathy reported in (2005) 7 SCC 353. This is a case where the husband filed a petition for divorce under Section 13(1) of Hindu Marriage Act on the grounds of cruelty and desertion. Family Court allowed the petition and that was reversed by the High Court. Taking note of the fact that the wife was insisting a separate residence and finding that the spouses are living separately for 14 years, the <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 Supreme Court held that there is irretrievable breakdown of marriage and allowed the appeal filed by the husband.

42. In V.M.Jawahar Lal .Vs. K.A.Sheela reported in 2018 (3) CTC 31, wife filed a divorce petition against the husband on the ground of cruelty and the husband filed a petition for restitution of conjugal rights. The Family Court allowed the petition filed for divorce by wife and dismissed the petition filed for restitution of conjugal rights. On appeal, finding that the husband inflicted cruelty on wife, brought prostitutes to home, drove the wife out of matrimonial home and that the spouses are living separately for more than 10 years and following the ratio in Durga Prasanna Tripathy .Vs. Arundhati Tripathy case, this court dismissed the appeals filed by the husband.

43. In G.V.N.Kameswara Rao .Vs. G.Jabilli reported in 2002 CJ (SC) 301 the appellant/husband was permanently working in United States of America, when he married the respondent. 6 months after the marriage, wife joined her husband in United States America. There used <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 to be occasional quarrel between the parties. A girl child was born to them. In 1985, wife returned to India with her daughter and never returned to USA. Then the husband filed divorce petition on the ground of cruelty. Family Court allowed the petition and that decision was reversed by the High Court. Noting that wife filed criminal complaint against the husband and his mother and they were detained in police station for

more than 10 hours. Also finding that the husband proved the acts of cruelty committed by the wife against him and there is irretrievable breakdown of marriage, the Supreme Court allowed the appeal filed by the husband and granted divorce.

44. In Rishikesh Sharma .Vs. Saroj Sharma reported in (2007) SCC 263, the husband filed a petition for divorce on the grounds of cruelty and desertion. Both the courts below did not find favour with the husband. Taking note of the fact that wife repeatedly filed criminal cases against the husband; that their only child was given in marriage and that the parties are not living together from 1981 for more than 28 years, allowed the appeal filed by the husband and granted a decree for the <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 dissolution of marriage.

45. In V.Rajagopalan .Vs. T.R.Parimala reported in CDJ 2015 MHC 6392, the wife filed a divorce petition alleging cruelty by her husband. Concurring with the case of the wife, the Family Court allowed the petition. Husband filed a Civil Miscellaneous Appeal. Taking note of the feeling of anguish, disappointment, frustration of the wife and also the fact that the spouses are living separately for 10 or 11 years, this court dismissed the Civil Miscellaneous Appeal filed by the husband.

46. In K.Srinivas Kumar .Vs. R.Shametha, (Civil Appeal No.4696/2013) the husband filed a petition for divorce on the grounds of cruelty and desertion. Family Court dismissed the petition and the High Court concurred with the Family Court. In appeal, finding that the spouses are living separately for 22 years, the Supreme Court held that the marriage has failed and irretrievably broken down and dissolved the marriage between the parties in exercise of powers under Article 142 of the Constitution of India.

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47. Admittedly, in the case before hand, the spouses are living separately from the year 2002. As already stated, prior to filing the petition, the spouses were living separately for about 16 months. The appellant has not taken any steps for restitution of conjugal rights. Straight away he sent Ex.P24-notice demanding divorce. Even in this notice, the appellant had just mentioned about the disrespectful nature of the respondent that she was more concerned about her parents and brother and the letter written by respondent's uncle. But pages and pages of allegations are made in the divorce petition. Except the allegations mentioned above, even the hint of other allegations did not find a place in this notice. Respondent's Ex.P25-reply found fault only with the parents of the appellant for the situation. Therefore, it is clear that majority of the allegations raised in the petition are invented only for the purpose of filing the case.

48. The date of marriage was on 05.04.2001. Appellant was transferred to Tiruppur on 14.09.2001 and the spouses started living there separately. It is the case of the respondent that she left to Ambasamudram <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 during December 2001 for delivery. The boy was born on 21.02.2002 at Ambasamudram. The respondent lived in the joint family consisting of appellant and his parents at Chennai for 5 months and with the respondent at Tiruppur for 2 months. There is evidence to show that after the birth of son, she lived in the joint

family for some time and then lived with respondent at Tiruppur till she moved to Sattur to report to duty. This court finds that there is no cause for the respondent to ask the appellant to go for a separate living for the reason that they are living separate in Tiruppur from 14.09.2001. This again demonstrates that most of the allegations made in the petition are invented only for the purpose of filing the case.

49. Much was said about the separate living of the appellant and respondent from the year 2002. The main reason for this long separation was the pendency of divorce case and then this appeal. It is pertinent to note here that the appellant had largely contributed to this long separation. This divorce case was filed in March 2004 and was disposed on 02.06.2009. But this Civil Miscellaneous Appeal was filed only in the <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 year 2017. There is a huge delay of 8 years in filing/numbering this Civil Miscellaneous Appeal. The learned counsel for the appellant submitted that though the appeal was filed in the Court within appeal time, the then counsel on record had not taken any steps to number the appeal and therefore, the delay. Appellant changed the advocate and only then the appeal was numbered. This explanation for the delay in filing/numbering the appeal is far from satisfactory. What was the appellant doing for all these 8 years? He can wait for one month or two months for numbering the appeal and not for 8 years. It is clear that appellant was the main reason for the long separate living of the spouses. Irretrievable breakdown of marriage is not a ground available in the statute book for seeking divorce. The Supreme Court in its landmark judgment in Anil Kumar Jain .Vs. Maya Jain reported in AIR 2010 SC 229 held that only the Supreme Court in its plenary power under Article 142 of the Constitution of India can order dissolution of marriage on the ground of irretrievable breakdown of marriage and not the Civil Courts and High Courts. Therefore, this Court is of the considered opinion that the judgments relied on by the learned counsel for the appellant for this <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 proposition, are not applicable to the facts and circumstances of this case.

50. This court, in order to find out the possibilities of settlement between the parties, held discussions with both the appellant and the respondent. The appellant was very particular about divorce and he offered to pay Rs.35,00,000/- to his son towards his maintenance and educational expenses. The respondent was pressing for joining with the appellant in the matrimonial fold, not only for her sake but also for the sake of their son. It is submitted that their son lived all these years without father's love, care and affection. Atleast hereafter he should have the love, care and affection of his father. The appellant was not even interested in taking the son with him. He filed this petition for the reliefs of divorce and custody of minor son. Though both reliefs had been negatived, he was given visitation right. He was permitted to see the minor son on every Sunday from 10.00 a.m. To 1.00 p.m. at a place agreed by both parties without detrimental to the education of the child. Strangely, it is informed that the appellant has not even once availed this visitation right. As already stated he has not paid even a single paise <https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 towards the maintenance of his son, who is now pursuing B.Com degree course. This attitude of the appellant shows he is neither a responsible husband nor a responsible father.

51. On cruelty, the Supreme Court in Dr.N.G.Dastane .Vs. Mrs.S.Dastane reported in AIR 1975 SC 1534 held that "We do not propose to spend time on the titles of their married life. Numerous

incidents have been cited by the appellant as constituting cruelty by the simple trivialities which can truly be described as the reasonable wear and tear of married life have to be ignored. It is in the context of such trivialities that one says that spouses take each other for better or worse. In many marriages each party can, if it wills, discover many a cause for complaint but such grievances arise mostly from temperamental disharmony. Such disharmony or incompatibility is not cruelty and will not furnish a cause for the dissolution of marriage. We will therefore have regard only to grave and weighty incidents and consider these to find what place they occupy on the marriage canvas".
<https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017

52. In Samar Gosh .Vs. Jaya Gosh reported in 2007 (4) SCC 511, the Supreme Court observed that "Human mind is extremely complex and human behaviour is equally complicated. Similarly human ingenuity has no bound, therefore, to assimilate the entire human behaviour in one definition is almost impossible. What is cruelty in one case may not amount to cruelty in other case. The concept of cruelty differs from person to person depending upon his upbringing, level of sensitivity, educational, family and cultural background, financial position, social status, customs, traditions, religious beliefs, human values and their value system".

53. Minor issues, normal wear and tear bound to happen during the initial stage of marriage. They cannot be considered as mental cruelty. As elaborately discussed through the pleadings, oral and documentary evidence and various pronouncements on the subject by the Honourable Supreme Court and High Court, it can be safely concluded that the appellant and his family members made mountain out of mole hill during the initial stage of marriage due to their unforgiving attitude
<https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 and allowed it to reach this far. Therefore, this Court finds that the appellant has not proved the ground of cruelty for granting divorce under Section 13(1)(i-a) of the Hindu Marriage Act, 1955. The learned Family Court Judge, on considering the evidence on record, rightly dismissed the divorce petition filed by the appellant. This Court finds no valid reasons to interfere with the order of the learned Family Court Judge dismissing the claim of the appellant for divorce and we confirm the order. The son, who was a minor at the time of filing this petition, is now a major, therefore, it is not necessary for any order with regard to the custody claim made by the appellant. Now the son is entitled to decide whether he wants to stay with his father, if he decides so, he can go and stay with his father as well. It is also open to the appellant-responsible father to educate his son further and shape him well to the needs of the changing world. In the light of the above, the rejection of the offer made by the appellant-father to make a sum of Rs.35,00,000/- towards the maintenance of his major son by the respondent/wife, cannot be accepted by us. Consequently, this Civil Miscellaneous Appeal is dismissed. The points are answered as above. There shall be no order as to costs.

<https://www.mhc.tn.gov.in/judis/>

C . M . A . No . 3

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Additional documents marked in the appeal as Exs.P.27 to P.33

1.Ex.P27 – Lawyer Notice dated 12/03/2013

2.Ex.P.28 – Reply Notice dated 21/03/2013

3.Ex.P29 – Copy of the petition in W.P.No.7758/2013

4.Ex.P30 – Order in W.P.No.7758/2013

5.Ex.P.31 – Copy of the petition filed in M.C.No.113/2013

6.Ex.P32 – Copy of the M.P.No.261/2013 filed in M.C.No.113/2013

7.Ex.P33 – Copy of the lists of return of gold jewellery and silver articles Internet: Yes Index : Yes
Speaking/Non speaking order To

1. The I Additional Principal Judge, I Additional Family Court, Chennai.

<https://www.mhc.tn.gov.in/judis/> C.M.A.No.3513 of 2017 T.RAJA, J., and
G.CHANDRASEKHARAN, J., mra Judgment in CMA No.3513 of 2017 26.04.2021
<https://www.mhc.tn.gov.in/judis/>