

Madras High Court

J.Anitha vs J.Prakash on 27 February, 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2012

CORAM

The Hon'ble Mr. Justice K.MOHAN RAM
and
The Hon'ble Mr. Justice G.M.AKBAR ALI

C.M.A.Nos.902, 903 and 2407 of 2010
and M.P.No.2 of 2010

J.Anitha

.. Appellant in CMA Nos.902 & 903 / 2010
& Respondent in CMA No.2407 of 2010

Vs.

J.Prakash

.. Respondent in CMA Nos.902 & 903 / 2010
& Appellant in CMA No.2407 / 2010

PRAYER IN CMA Nos.902 & 903 / 2010 .: Civil Miscellaneous Appeals filed under Section

PRAYER IN CMA No.2407 / 2010 .: Civil Miscellaneous Appeal filed under Section 19 of the Family Courts Act against the judgment and decree dated 21.12.2009 on the file of the Principal Family Court at Chennai in so far it is against the appellant in not granting the Dissolution of Marriage on the grounds of Nullity and Mental Disorder.

For Appellant in CMA Nos.902 & 903 / 2010 & For Respondent in CMA No.2407 / 2010 : Mr. V.Rangarajan For Respondent in CMA No.902 & 903 / 2010 & For Appellant in CMA No.2407 of 2407 / 2010 : Mr. K.P.Gopalakrishnan

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C O M M O N J U D G M E N T (Judgment of the Court was delivered by K.MOHAN RAM, J.) CMA Nos.902 and 903 of 2010 have been filed by the wife against the judgment and decree passed in O.P.No.1985 of 2002 and O.P.No.2268 of 2007 on the file of the Principal Family Court, Chennai, respectively. CMA No.2407 of 2010 has been filed by the husband against the judgment and decree passed in O.P.No.1985 of 2002 as far as disallowing of the prayer for divorce on the ground of

mental disorder of the wife.

2. In these appeals, for the sake of convenience, the husband is referred to as the appellant and the wife is referred to as the respondent.

3. The case of the appellant / husband before the Court below is as follows:-

a. The engagement between the appellant and the respondent was held on 02.07.2001. The appellant was not permitted to interact with the respondent before the marriage and he was not even allowed to visit the respondent's house. The marriage between the appellant and the respondent was solemnized as per Hindu Rites and Customs on 05.09.2001 at Chennai. During the first night also, there was no change in the attitude of the respondent and she behaved inappropriately without any enthusiasm. She behaved very strangely and also childishly and did not allow the appellant even to touch her, leave alone entertaining the appellant to have sex and she appeared to be frightened and agitated. She was restless and impatient and the marriage was not consummated not only on the first night but also on the subsequent few days till 17.09.2001, when both of them were together.

4. On the very first night of the marriage, the respondent informed the appellant that her marriage was performed against her will and consent and that she was not interested in marrying the appellant. From 06.09.2001, the respondent was only thinking of going back to her parent's house and was consistently mentioning the same to the appellant. On 07.09.2001, she complained of leg pain and the appellant's father took her to Dr.M.Subramaniam, MS., Ortho., on 11.09.2001 she complained of eye pain and hence she was taken by the appellant to Dr.Radhika, who after examining her, wanted her to be brought again the next day. The next day, though she left for the Doctor's clinic along with the appellant's father, she insisted on going to her parent's house, at first, but upon reaching her parent's house, she changed her mind and refused to go to the Doctor. She removed her Thali chain openly and refused to leave her parent's house which action was fully supported by her parents. On 14.09.2001 the respondent and her parents visited the appellant's grand father's residence and wanted to reconcile the issue. On 15.09.2001, the respondent was taken to a psychiatrist viz., Dr.Mohanraj by her parents and the appellant's grand father was also present at that time. After examining her, the Doctor felt that she was suffering from severe anxiety and the counseling was fixed for 20.09.2001. In the afternoon on 17.09.2001, the respondent complained of severe stomach pain, so she was taken to Dr.Radha Madhavan by the appellant's mother. Though after taking medicines she was having some relief, she insisted on going to her parent's house and she was found restless. The appellant felt that the respondent's family is overtly possessive about her and hence he allowed the respondent to go to her parent's house on the night of 17.09.2001. On the same night, i.e., on 17.09.2001, the respondent's mother called the appellant and his parents over phone and informed that the respondent was having her periods and hence would return only on 20.09.2001.

5. It is the further case of the appellant that on 20.09.2001, at around 11.00 am, the respondent, her parents and sister barged into the appellant's residence and behaved in a very indecent and inappropriate manner and they shouted at the top of their voice using filthy language, which caused

severe embarrassment to the appellant's family members as this behaviour was witnessed by their neighbours and passerby. Threatening the appellant with police action stating that they will file a police complaint alleging cruelty and dowry harassment, after four hours, they all left carrying with them the articles of the respondent like cloths, silver ware, box containing jewels etc., without the knowledge and consent of the appellant and his parents in a stealthy manner. At that point of time, the respondent removed her Thali twice and shouted that it was not necessary and the respondent had since then not returned. No dowry was either demanded or obtained. Subsequently, the respondent's parents have been on a defamatory campaign approached all sorts of people with false stories against the appellant and his parents.

6. On 21.11.2001 repeated phone calls were received by the appellant and his parents to the effect that representatives of a women's association and her parents would visit the appellant at 04.00 pm. Hearing this, the appellant's father approached Abiramapuram Police Station at 12.00 noon. However, they did not come to the appellant's residence.

7. On 24.11.2001 the appellant's mother lodged a police complaint before All Women Police Station, Adyar, and the same was registered in the Social Service Register bearing No.1169/CSR/W-2/PS 2001. On 25.11.2001, the parents of the respondent also approached the same police Station and filed a complaint against the appellant and his parents, which was taken on file as CSR No.1172/CSR/W2/PS/2001. The appellant was under the reasonable apprehension that the complaint contains total falsehood, including allegations of cruelty and dowry harassment. On 26.11.2001 the respondent sent a letter to the appellant making false allegations as though the mother of the appellant demanded Rs.3 lakhs. The Police Authorities conducted counselling between the two families and around six sittings took place and as there was no positive progress, the appellant has been forced to approach the Family Court.

8. The respondent has been suffering from such mental disorder and to such an extent that the appellant cannot reasonably be expected to live with the respondent and the marriage is liable to be dissolved on the ground of mental disorder. The act of the respondent removing her Thali on many occasions, the acts, deeds and attitude and false police complaints by the respondent, from the day one of the marriage, has caused great mental strain, agony and cruelty to the appellant.

9. The respondent was already engaged to one V.Ramachandran and after the parents of the said Ramachandran found out that the respondent was of unusual character and mentally abnormal cancelled the marriage, but this fact was not informed either to the appellant or to his parents. This is nothing but a fraud played by the respondent and her parents concealing material facts concerning the respondent. The vessels given by the respondent bear the initials of the said V.Ramachandran. Had this fact been informed to the appellant before the marriage, the appellant would not have consented for the marriage, therefore, the appellant sought for a decree for dissolution of marriage under Sections 12 (1) (C) or 13 (1) (ia) and 13(1) (iii) of the Hindu Marriages Act, 1955.

10. The respondent / wife contested the petition by filing a detailed counter statement inter-alia contending as follows:-

a. The entire allegations in the petition are denied and the appellant is put to strict proof of the same. The respondent is a Commerce Graduate from Meenakshi College for Women in Chennai. She had been an outstanding student in all her college days and she possessed of Proficiency Certificate and Certificate of Merits for Scholastic Excellency. She joined her M.Com., course in SIET college for Women and she discontinued the same since her parents wanted her to get married. Pursuant to an advertisement published in the English Daily The Hindu dated 17.06.2001, the respondent's parents visited the appellant's parents at their residence and exchanged the horoscopes. On the very same day, the respondent's parents had informed the appellant's parents that the respondent was earlier to be engaged to another Groom and the alliance was stopped as the groom wanted to go to USA and the respondent's parents were not inclined to send the respondent abroad. The letter of mutual understanding between the respondent's family and the earlier groom was shown to the appellant's family.

11. There was no attempt to suppress any fact as alleged by the appellant. Thereafter, the engagement took place on 02.07.2001 at the residence of the appellant and a pooja was performed and some silver and stainless steel gift items were presented to the appellant by the respondent's family and the respondent was also present in the engagement and she was asked to sing few songs and she sang the same along with her sister. The marriage was performed on 05.09.2001. During the period of two months from the date of engagement to the date of marriage, the appellant's family had visited the respondent's family on several occasion and the appellant had occasions to personally meet and talk to the respondent. Therefore it is not correct to state that the appellant was not allowed to meet the respondent. When both the families went for purchasing the wedding dresses, the respondent had accompanied them and as such the parents of the appellant had an occasion to assess the respondent attitude and mental status. The appellant had also come to the respondent's house to see the wedding dresses and on such occasion also, the appellant was interacting with the respondent.

12. At the time of marriage, the appellant was presented with gold chain and a costly diamond ring along with the bracelet. The respondent was actively participating in all the events. On the very same night of the marriage, the nuptials were arranged at the house of the appellant. As any other normal girl, the respondent had the initial inhibitions and she was also shy and reluctant to interact with the appellant freely. The new atmosphere and being brought up in an orthodox family had made the respondent have her inhibitions initially. However, she had not prevented the appellant even to touching her as alleged. They were freely discussing with each other and tried to understand each other and the marriage was very much consummated. Both of them went to cinema, temple and beach and their life was perfectly normal, but she was unable to understand the appellant's behaviour as he used to get wild if the respondent talked about her parents or wanted to call up them or to talk to them by phone. The respondent was effectively prevented from interacting with her parents. It is not correct to state that the marriage was performed against her wishes. The marriage was performed only with her full consent and willingness.

13. The next day both of them went to the marriage hall and the appellant was happily chatting with all the guests who were yet to go back and had his breakfast and lunch in the marriage hall itself and there was no complaint whatsoever from the appellant. The respondent was taken to Doctor since

she complained of pain on her leg as she was standing in the reception whole of the previous evening. Since she was not having proper sleep for about two to three days her eyes were watering and a little reddish and she was again taken to the eye specialist. On 6th and 11th September, the respondent's parents invited them to their house as some of their elderly relatives have come there and wanted to see the couple, but the appellant virtually refused to go to the respondent's house. On 09.09.2001 the respondent's father came to the appellant's house and personally invited the appellant to come along with the respondent and his parents to their house as some of the elders of the family wanted to meet them and have lunch with them. At that time, the appellant's mother told the respondent's father that coming from a financially sound family he could be generous enough to spare a sum of Rs.3 lakhs in order to enable them to buy a flat which is being used by them as a rented portion. The said demand came to the respondent's father as a bolt from the blue as the respondent's father did not expect this. The appellant's mother shouted at the respondent's father and told him that her son was not a person who will merely participate in lunch meetings and they also know how to get their demand complied with and thereafter the respondent's father left the place. The respondent told her mother-in-law that it is not fair on her part to demand Rs.3 lakhs for the purchase of a flat and for that the appellant's mother warned her not to argue with her.

14. On 11.09.2001 the respondent was taken to an eye Doctor. The respondent requested the appellant to take her to her parent's house at least for about an hour, but the appellant flatly refused, which caused great pain to her. The next day the respondent expressed her disappointment over the appellant's behaviour to her father-in-law and her father-in-law took her to her parents house, where there was a dialogue between the appellant's father and the respondent's parents and the respondent's parents also expressed their unhappiness over the appellant's behaviour in not visiting their house despite being invited by them. There was only an argument and there was no removal of Thali or any other issues as stated by the appellant in the petition.

15. On 14.09.2001 the respondent, her parents and her sister went to the house of the appellant's grand father for reconciliation as he happens to be a senior member of the family. Only in the light of the advise of the grand father of the appellant, the respondent went back to the matrimonial home and was there until 17.09.2001 on which day she was sent along with the maid to her appellant's house. The respondent never spoke incoherently or behaved abnormally as alleged by the appellant.

16. The appellant and his family members have come out with a new charge that the appellant is mentally ill. The respondent's father asked them how they can make such an allegation and they wanted her to be taken to a psychiatrist to be checked up and that was the reason why she was taken to a psychiatrist Doctor-Mohanraj. As the respondent has no previous history of mental illness of any kind and after examination the Doctor informed the appellant that he should take care of the respondent and allow her to settle in the new atmosphere without disturbing her or threatening her in any manner which caused anxiety to her. Suppressing these facts, the appellant had come out with false allegations.

17. On 17.09.2001, as the respondent suffered severe stomach pain, she was taken to Dr.Radha Madhavan by her mother-in-law. The respondent suffered with the stomach pain because of her

monthly periods and as she was not able to bear the increasing pain, she was taken to her parent's house with the permission of her in-laws. After reaching home, the respondent's mother informed the appellant as well as his mother that the respondent was having her monthly periods she will be sent back in two days time.

18. The respondent, as promised by her mother, went to the house of the appellant with her younger sister and her parents on 20.09.2001. When the door was knocked the respondent's mother-in-law shouted opened the door with an unpleasant expression. The respondent's mother-in-law started shouting at the respondent not to go inside and the stay in the hall itself and the appellant's mother abused the respondent's parents and scolded them badly. She said that they are not happy with the respondent and they wanted to take her to a lady psychiatrist for further checkup. The respondent's parents told her that unless there is reasonable cause, there is no need for consulting a psychiatrist. The appellant's father informed that they are not interested in keeping the respondent with them until she agreed to come for a consultation to a lady psychiatrist, which made the respondent to cry and felt harassed. The entire discussion ended up in the appellant's parents asking the respondent to take her belongings and go to her parent's house until the issue was reconciled with the intervention of other family members. The appellant's mother said that they do not want to keep petty things with them giving up their major demand of Rs 3 lakhs towards purchase of the flat. She further told that the respondent is free to bring back the materials when her father had made ready the cash of Rs.3 lakhs. The respondent was thus compelled to take few of the materials and left the place. The respondent denied the allegation that she removed her thali twice or that she declared that she was not going to stay in the appellant's house. The efforts taken by the respondent's family towards reconciliation failed and the respondent was sent out of the matrimonial home for the no fault of hers. It is only the greed of the appellant's parents for money that made them to send her out of the matrimonial home. The respondent and her parents had contacted the appellant's parents in person on various occasions proposing reconciliation and the appellant's grand father was contacted in this regard, but all their efforts ended in vain.

19. The respondent's father approached the appellant's parents and his grand-father and some common friends explaining to them the events that took place leading to unnecessary misunderstandings and prayed for reunion, but this effort has been described as a defamatory campaign. The respondent requested the appellant to come and take her back to his house, but the appellant did not take her back. All efforts for reunion taken by the respondent's parents had been misconstrued and misinterpreted by the appellant. The respondent sent several letters to the appellant but none of the letters were replied. The respondent also sent prasadam and photos of poojas performed for their welfare. After waiting for two months the well-wishers of the respondent's family members advised the respondent to approach "The Jana Nayaka Mathar Sangam", which is a social association that help women in distress. The respondent approached the Sangam and the Sangam contacted the appellant's parents for appointment to solve the dispute, but this has been wrongly interpreted by the appellant in his petition.

20. On 24.01.2001 the appellant's mother lodged a complaint before the All Women Police Station, Adyar, containing false and frivolous allegations. The respondent and her family were called for an enquiry and during enquiry, they explained the entire facts including their attempt to bring about a

compromise by approaching "The Jana Nayaka Mathar Sangam" and the failure of the efforts. It was informed to the police authorities that the separation had occurred in view of the failure on the part of the respondent's family to comply with the demand of dowry to the tune of Rs.3 lakhs and the cruelty the respondent had suffered at the hands of the appellant's family. There was six sittings to reconcile, but the same did not yield any fruitful result and hence the appellant and the respondent were advised to seek remedy before the Family Court. Even in her letter, dated 26.11.2001 written by the respondent to the appellant, she has clearly mentioned about the dowry demand. The reason for separation was not the mental status of the respondent, but because of the dowry demand made by the appellant's family and the failure to comply with the demand. The respondent, even as on the date is wearing her Thali and she considered it as a sacred one and she never removed her Thali as alleged in the petition. Even though the appellant applied leave for his honeymoon, he spent his entire leave at home without taking the respondent anywhere outside since the demand for dowry was not meted out. The respondent and her family had not suppressed the fact of the earlier engagement and the stoppage of the marriage. Some of the vessels presented to the appellant bear the inscription of the name of V.Ramachandran itself which itself shows that the appellant and his family were aware of the earlier engagement and cancellation thereof. The allegation that the earlier engagement was annulled on account of unusual character and mental abnormality of the respondent is false.

21. The respondent is a graduate, a music lover, has practice in playing violin and she is a polite, humble and soft natured person and she is a timid girl and this has been abused by the appellant and his family members. The respondent possesses normal mental and physical health. She is willing and wants to join the appellant and lead a happy matrimonial life with him. She had not committed any acts of cruelty as alleged in the petition and there is no legal, moral or justifiable reason for the appellant to seek divorce.

22. Pending the petition for divorce the respondent/wife filed O.P.No.2268 of 2007 for Restitution of Conjugal Rights under Section 9 of the Hindu Marriages Act. In that petition, the averments contained in the counter statement have been repeated. The petition for restitution was contested by the appellant / husband by filing a counter statement, which virtually contains the averments contained in the divorce petition and therefore the same are not being repeated.

23. Before the Family Court, on the side of the appellant, the appellant was examined as P.W.1, his father was examined as P.W.2 and his grand father was examined as P.W.3 and one family friend was examined as P.W.4 and Exs.P-1 to P-4 were marked. On the side of the respondent / wife she was examined as R.W.1 and Exs.R-1 to R-9 were marked. As per the direction of the Family Court, the respondent was examined by Dr.Vijay Nagasamy, Psychiatrist and Relationship Consultant and he was examined as C.W.1 and his report was marked as Ex.C-1.

24. The Family Court, on a consideration of the evidence adduced before it, granted a decree for divorce on the ground that the marriage had not been consummated and it amounted to causing mental cruelty and the appellant's complaint on false ground of dowry harassment also caused mental cruelty and the respondent had deserted the appellant without any valid reason but held that the alleged mental disorder of the respondent had not been proved and accordingly, rejected the

prayer for divorce on that ground and consequently the Family Court rejected the petition filed by the respondent / wife for Restitution of Conjugal Rights. Being aggrieved by that, the above appeals have been filed as stated supra.

25. Heard the learned counsel on either side and perused the materials available on record. 26. Mr.V.Rangarajan, the learned counsel for the respondent/wife made the following submissions:-

a. The case of the husband is that he was not allowed to interact with his wife before the marriage; the wife informed the husband that the marriage was performed without her consent; she was having childish behaviour; the wife was restless and impatient during first night; the marriage was not consummated between 5.9.2001 and 17.9.2011; because of the mental disorder of the wife, the husband suffered mental cruelty; because of the police complaint lodged by the wife against the husband and his parents, they had to obtain anticipatory bail and the false allegations of demand of dowry had caused mental stress and agony, which amounts to mental cruelty; on 20.9.2001 the wife went to the house of the husband with her sister and parents and abused them in a filthy language and the whole ugly scene was witnessed by the neighbours which caused great embarrassment to the husband's family members and their image and reputation was tarnished and at that time the wife removed her 'mangal suthra' which also caused mental cruelty; admittedly, the wife was earlier engaged to one Ramachandran but the marriage was stopped and this fact was suppressed by the wife and her parents; the wife was taking treatment for her mental disorder for nearly three years before the marriage and this fact had been purposefully suppressed and had the stoppage of the earlier marriage and the taking of the treatment for mental disorder been brought to the knowledge of the husband and his family, the husband would not have given his consent for the marriage.

27. The learned counsel submitted that the allegation of mental disorder has been disbelieved and rejected by the Family Court, but divorce had been granted on the ground of mental cruelty mainly believing the incident that took place on 20.9.2001 and the suppression of real reason for cancellation of the earlier marriage. The learned counsel submitted that the case of the husband is that because the wife is suffering from mental disorder, it would amount to causing mental cruelty to the husband. The husband has not separated the grounds of mental cruelty and mental disorder. But the Family Court wrongly separated both the grounds and held that there is mental cruelty and further held that there is no mental disorder.

28. The learned counsel submitted that the engagement took place on 2.7.2011 and the marriage took place on 5.9.2001. On 7.9.2001 as the wife had leg pain due to the fact that she had to stand for long hours during marriage reception, she was sent to Orthopedic Surgeon Dr.Subramanian; on 11.9.2001 since the wife had some eye problem, she was taken to an Ophthalmologist and again on 17.9.2001 since she had stomach pain due to menstrual problem, she was taken to Dr.Radha Madhavan and all the aforesaid treatments given to the wife are at the instance of the husband's family members and the same have been admitted in the pleadings and the evidence but the Family Court has observed that the same have not been proved by adducing acceptable evidence by the wife.

29. The learned counsel submitted that while the Family Court has totally accepted the case of the husband and without even referring to the evidence of P.Ws.1 to 4 has simply observed that the husband's evidence has been corroborated by the evidence of P.Ws.2 to 4 and the Family Court has totally failed even to refer to the evidence of R.W.1 and the documentary evidence adduced by her; even the evidence adduced on the side of the husband has not at all been discussed; only because of the non consideration of the evidence adduced on the side of the wife erroneous findings have been recorded by the Family Court.

30. The learned counsel submitted that though it is the case of the husband that the wife was restless and impatient and speaking incoherently , there is absolutely no acceptable evidence on record and no medical evidence has been adduced and only the interested witnesses have been examined, namely, his father, grandfather and family friend; even for the occurrence said to have taken place on 20.9.2001, which was admittedly witnessed by the neighbours, none of the neighbours have been examined and no explanation has been given for their non examination.

31. The learned counsel submitted that even in chief examination P.W.1 had stated that because of their tiredness, they went to sleep on the first night but he has alleged that she had no inclination for cohabitation, which is contrary to the truth.

32. The evidence of R.W.1/wife clearly proves her educational qualification, extracurricular activities like vocal, instrumental, painting etc., which will prove that she is neither immature nor mentally ill. The learned counsel submitted that it is the case of the husband that there was no proper interaction between him and his wife before marriage. But in his cross examination, he had admitted that after the purchase of wedding dresses for the marriage, he had visited the wife's place twice and he has also admitted that after the betrothal, he had visited the wife's place four or five times, which is contrary to what he has stated in his petition as well as in his chief examination.

33. The learned counsel submitted that the husband and the wife lived together hardly for 12 days and in these twelve days, the wife suffered leg pain, eye ailment and stomach pain, and in these circumstances, even if there was no consummation of the marriage, the same cannot be a ground for granting divorce. The wife in her evidence has stated that she is shy in nature and she is so fond of her parents and when such a girl goes to the husband's place after her marriage it will normally take sometime for her to adapt to such a new environment and circumstances. Had the husband been affectionate and infused confidence in her without magnifying the small mistakes, if any, on her part, it would have been possible for them to live together and consummate the marriage. R.W.1 in her evidence has categorically stated that she is very much interested in living with her husband and she had spoken about the steps taken by her parents to reconcile the differences between the two families and the efforts taken to bring about reunion, but overlooking all these facts, the Family Court has erroneously observed that the wife has not taken any steps for reunion.

34. It is the case of the husband that the stoppage of the earlier marriage was suppressed whereas in his cross examination P.W.1 has admitted that he knew about the cancellation of the earlier marriage and the earlier marriage had been stopped as her family did not like to send her with the bridegroom to U.S.A. and that was the reason for the stoppage of the marriage.

35. The learned counsel submitted that in Ex.R.3 letter written by the husband to the wife he had not mentioned anything about the alleged suppression of the stoppage of the earlier marriage and the reason for the same. The learned counsel submitted that even in Ex.R3 letter dated 8.10.2001 sent by the husband to the wife, the husband has not alleged that the wife is suffering from mental disorder and therefore, submitted that the allegation of mental disorder is a newly invented one and stated in the petition for the first time only to make out a ground for seeking divorce.

36. The learned counsel submitted that though a complaint was lodged against the parents of the husband, she had not sought for any criminal action being taken against them but only she had sought for reconciliation and on her complaint, no case was registered and therefore, it cannot be said that a false complaint for dowry demand had been lodged by the wife. The learned counsel further submitted that though R.W.1 in her evidence had deposed about the demand of Rs.3.00 lakhs made by her mother-in-law, it has not been denied by putting a suggestion in her cross examination. The learned counsel submitted that the mere filing of the complaint for dowry demand will not amount to causing mental cruelty when such complaint has not been found to be false. In this case when admittedly, no criminal case was registered, the Court below has committed an error in holding that the alleged criminal complaint had caused mental cruelty.

37. The learned counsel submitted that the husband was inside the house when the wife and her parents went to the house of the husband and as such he could not have witnessed the alleged removal of Thali by his wife. The learned counsel submitted that when the incident is said to have been witnessed by the neighbours, any one of the neighbours would have been examined to prove the incident but none of the neighbours have been examined and in the absence of corroborative evidence and only on the basis of the evidence of the interested witnesses, namely, P.Ws.1 to 4, the Court below has held that the wife had removed her 'Thali' which will amount to mental cruelty, which is erroneous.

38. The learned counsel submitted that when vessels and other gifts were presented to one Ramachandran at the time of Betrothal, the initials of Ramachandran were inscribed in the vessels and as the marriage was cancelled, the vessels and articles were returned to the wife and the same were presented to the husband and from that they could have easily found the initials and they would have asked the wife's family about the initials of some other person and therefore, the allegation that the cancellation of the earlier marriage was suppressed cannot be accepted.

39. The learned counsel submitted that the Family Court has observed that the receiving of threatening calls from the respondent and her family members would amount to mental cruelty in the absence of any acceptable proof. Had the Family Court considered the letters written by the wife, it could have seen that the wife has suffered mental cruelty at the hands of the husband and his family members and not the husband and his family members at the hands of the wife and her family. The learned counsel submitted that the evidence of C.W.1 Dr. Vijay Nagasamy clearly proves that the wife is not suffering from any mental disorder or any mental illness. Therefore, the Court below is right in rejecting the prayer for divorce on the ground of mental disorder. The learned counsel submitted that the wife and her family members came to the matrimonial home on 20.9.2001, but it was the husband and his family members who did not allow her to stay in the

matrimonial house and sent her back by making a demand of Rs.3.00 lakhs for purchasing a flat. The learned counsel submitted that several attempts made by the wife and her family members for reconciliation and reunion, have gone in vain because of the adamant attitude of the husband and his family members and the relevant evidence on this aspect has not at all been considered by the Family Court, which has resulted in the recording of a erroneous finding that the wife had not taken any steps for reunion with her husband. When the wife is not at fault and she had been sent away from the matrimonial home, she is entitled to get a decree for Restitution of Conjugal Rights.

40. The learned counsel in support of his submissions relied on the following decisions:-

a. AIR 1982 Calcutta 138 b. (1988) 4 SCC 247 c. 2003 (2) CTC 760 d. AIR 1988 SC 121 e. AIR 1982 Delhi 240 f. AIR 2003 Karnataka 357 g. AIR 1968 Punjab & Haryana 489 h. AIR 1999 Himachal Pradesh 17 i. AIR 2007 SC 1426 j. (2005) 2 SCC 22 k. AIR 2006 SC 1675

41. Countering the said submissions, Mr.K.P.Gopalakrishnan, the learned counsel for the appellant/husband made the following submissions:-

a. People get married for begetting a child and to have marital pleasure in the matrimonial life. But in this case, after the marriage the wife stayed with her husband only for 12 days and during that period, there was no conjugal relationship. Even during these 12 days, the wife went to her parents house several times. On 17.9.2001 the wife left the matrimonial house with no idea of return; on 20.9.2001 she returned to her matrimonial home with an idea to pick up a quarrel and after four hours of quarrel using foul words by the wife and her parents and threw away her 'Thali' and took all her articles and left the matrimonial home for ever; later, the wife filed a false police complaint against the husband and his parents as if they demanded dowry, which necessitated the filing of a petition for anticipatory bail; there was several threatening telephone calls to harass them; the wife made false allegations in her letters and in her counter and in her restitution petition before the Family Court, which points out the complete break down of matrimonial life with no chances of living together and no useful purpose will be served in continuing the matrimonial tie.

42. The learned counsel submitted that it is a fit case where the marriage should be dissolved as the marriage has irretrievably broken down as per the decisions of the Apex Court. The learned counsel submitted that on the side of the appellant, the husband was examined as P.W.1 and he gave cogent evidence which was not demolished by the respondent/wife. During his chief examination, P.W.1 has spoken about the mental condition of his wife; non consummation of marriage; the incident that took place on 20.9.2001 and the removing of Thali by the wife; withholding the facts with regard to the mental condition of the wife; withholding of the reasons for the cancellation of the earlier marriage after betrothal and the evidence of P.W.1 has been corroborated by the evidence of his father P.W.2, his grandfather P.W.3 and his family friend P.W.4., but their evidence have not been demolished in the cross examination. Their evidence have been properly considered by the Family Court and only after the consideration of their evidence the Family Court has rightly granted the the decree for dissolution of marriage on the ground of mental cruelty and therefore, there is no reason whatsoever to interfere with the well considered judgment of the Family Court.

43. The learned counsel submitted that at the instance of the husband, the wife was examined by Psychiatrist Dr.Vijay Nagasami and he has submitted a report Ex.C1, wherein he has stated as follows:-

"She appears to have been over-protected by both parents and led an extremely sheltered life with limited social exposure."

"Her intellectual functioning appeared to be border line on clinical examinations although no gross mental sub-normality could be detected."

"It is difficult for such a person to lead a normal married life. They will require more training to lead normal married life."

"By giving proper training it may be possible for her to work on the relationship."

"She is perfectly rational but less aware as to how to conduct herself in married life."

"Under socialised person can lead a normal life if they are given proper training."

"Anitha did not tell me that prior to the marriage she had consulted psychiatrist and that she has taken medicine. Anitha did not tell me that she had consulted Psychologist and she was taking mediation for her psychological problems."

"According to my report Anitha is suffering from low self esteem, over protection by her parents, extremely limited interaction with opposite gender, delayed response to questions put to her, undersocialised behaviour problem, frontal lobe deficits and border line IQ."

44. The learned counsel submitted that R.W.1 (wife) had admitted in her evidence that she has the mind of a child; she is under treatment for three years with Dr.Nambi Rajan; she does not know the names or dosage particulars of the tablets prescribed by Dr.Nambi Rajan; she is not interested to have sex and she is not interested in matrimonial life. According to the learned counsel, all the aforesaid submissions point out to a mental disorder of such a kind and extent that the appellant/husband cannot be reasonably expected to live with the respondent/wife. The report of the doctor C.W.1 also shows that the wife has incomplete development of mind as contemplated in the Act.

45. The learned counsel submits that her mental condition was not intimated to the husband and his family members. Similarly, the reasons for cancellation of the earlier marriage was also not intimated to the husband and his family members, which amounts to withholding of vital information concerning the wife this would entitle the husband to seek a decree for divorce on the ground of nullity under Section 12(1)(C) of the Hindu Marriage Act.

46. The learned counsel submitted that the Family Court having concluded that there was material misrepresentation failed to pass a decree of nullity under Section 12(1)(c) of the Hindu Marriage

Act. The learned counsel submitted that the petition for restitution of conjugal rights has to be decided separately on merits. In this case, the husband had not withdrawn from the company of his wife, whereas the wife has withdrawn voluntarily from the company of the husband without any reasonable cause and therefore, she is not entitled for restitution of conjugal rights.

47. In support of the aforesaid submissions, the learned counsel relied on the following decisions:-

a. 2010 1 MLJ 889 b. 2009 5 LW 781 c. 2009 3 LW 708 d. 2009 2 LW 192 e. 2009 2 LW 43 f. 2009 1 LW 332 g. 2008 4 MLJ 1172 h. 2008 3 LW 864 i. 2007 5 MLJ 1397 j. 2007 4 LW 249 k. 2007 2 LW 902 l. 2006 2 LW 606 m. 2006 2 LW 419 n. 2005 4 CTC 287 o. 2005 2 SCC 22 p. 2003 4 LW 609 q. 2002 2 LW 250

48. We have considered the aforesaid submissions and perused the materials available on record.

49. At the outset we would like to point out that a perusal of the judgment of the Court below shows that the Family Court has not at all referred to and discussed the evidence of R.W.1 and the documentary evidence adduced on her side. Similarly, the Family Court after referring to the case of the husband has referred to a part of P.W.1's evidence and has not at all referred to and discussed the evidence of P.Ws.2 to 4 and simply has stated that the allegations have also been substantiated by P.Ws.2 to 4. Similarly, as regards the incident that took place on 20.9.2001 after referring to P.W.1's evidence the Family Court has observed that the same has been proved. The evidence of P.Ws.2 to 4 is neither referred to nor discussed.

50. As far as the alleged telephone calls said to have been received by the husband's family, the Family Court has based reliance on the complaint of the husband's mother with the All Womens Police Station, Adayar. The Family Court has not at all referred to the allegations contained in the complaint lodged by the wife and in fact the complaint was not marked separately. The Family Court has observed that the contention of the wife that due to the physical ailment of thigh pain, eye pain and stomach pain she was not able to cohabit with the appellant for the said twelve days is not acceptable because there is no supporting medical proof for the same to the effect that during the said period due to the said ailment she is not in a position to have cohabitation as she was medically prevented for the same. The said observation is totally perverse as the husband himself in his petition as well as in his evidence admitted that she was treated for the said ailments. The admitted fact need not be proved by the wife. Therefore, it is clear that the Family Court has not at all applied its judicial mind to the evidence available on record. Similarly, we would like to point out that some of the submissions made by Mr. K.P.Gopalakrishnan, learned counsel for the appellant/husband are not based on any evidence.

51. The following are the admitted and undisputed facts:-

a. The betrothal between the appellant and the respondent took place on 12.7.2001. The marriage was solemnised on 5.9.2001. The respondent wife complained of leg pain and she was taken to Orthopedic doctor and was treated and she was advised to come bak again for a test. On 15.9.2001 at the instance of appellant's parents, the respondent was taken to Psychiatrist Dr.Mohan Raj; on

17.9.2001 she had to leave the matrimonial home because of stomach pain due to menstrual problems; on 20.9.2001 the respondent/wife with her family members went to the matrimonial home; on 24.11.2001 the mother of the appellant/husband filed a false complaint against the respondent/wife and her parents; on 25.11.2001 the respondent/wife gave a complaint at All Womens Police Station, Adayar; but no case was registered; on the basis of the both the complaints only counselling was conducted and in these circumstances, a petition for dissolution of marriage was filed by the appellant/husband on 25.2.2002.

52. The following alleged acts and omissions on the part of the wife are relied upon by the appellant/husband to contend that the same caused mental cruelty to him:-

a. On the first night, the respondent/wife behaved inappropriately without any enthusiasm; she was restless and impatient; she behaved strangely and childishly and did not allow the appellant/husband even to touch her and the marriage was not consummated; the respondent/wife even on the very first night informed the appellant that the marriage was performed against her consent and will and she was not interested in marrying the appellant; on 12.9.2001 the respondent/wife, who was accompanied by the appellant's father, left the house to go to Opthal clinic, but on the way she insisted to go to her parents house and on reaching her parents house she changed her mind and refused to go to the clinic and she removed her Thali and refused to leave her parents house; on 14.9.2001 the respondent and her parents visited the appellants grandfather's residence and wanted to reconcile the issue and at that time, she spoke incoherently and seemed very restless and impatient; on 20.9.2001 the respondent/wife and her family members came to the appellant's house and they behaved in a very indecent manner; they abused the appellant and his family members by using filthy words which caused severe embarrassment to the appellant and his family members as the incident was witnessed by their neighbours and passers by; only after four hours they left with the articles of the respondent without the knowledge of the appellant and at that time the respondent/wife removed her Thali twice saying that it was not necessary; on 21.11.2001 repeated phone calls were received by the appellant and his parents to the effect that the representatives of women's association would visit the appellant's house and apprehending some trouble, the appellant's father gave a complaint with the Abirampuram Police Station, but none turned out; on 25.11.2001 the parents of the respondent lodged a complaint against the appellant and his parents which necessitated the appellant for seeking anticipatory bail for him and his family members; in the complaint false allegations of dowry demand have been made, which caused great mental cruelty.

53. Ex.R.3 is the letter dated 8.10.2001 written by the appellant/husband to the respondent/wife. In Ex.R3 except the following, nothing has been stated about what happened in the first night:-

"It is painful to say that the marriage was wrecked on the wedding night itself. The marriage was not consummated."

54. Though in Ex.R.3, the appellant has narrated everything in minute details, he has not stated that the respondent behaved inappropriately without any enthusiasm; she behaved very strangely and childishly and did not allow the appellant even to touch her; she appeared to be frightened and

agitated; she was restless and impatient; she never allowed the appellant to touch her; on the first night, she informed him that her marriage was against her will and consent and she was not interested in marrying the appellant and therefore, we are of the considered view that the aforesaid allegations made in the petition for divorce do not find place in Ex.R3 but are only invented for the purpose of this case. When all the other events have been mentioned with minute details, if really, the respondent/wife had behaved as alleged by the husband, he would have mentioned the same in Ex.R.3. Except the non consummation of the marriage, none of the allegations have been mentioned in Ex.R3. Therefore, the said allegations appear to be invented only for the purpose of this case. In fact, P.W.1 in his chief examination has stated as follows:-

"cly; nrhh;thfapUf;fpwJ vd;W mth; brhy;ynt ehd; mtIU jhk;gj;;jpa cwtpw;F tw;g[Wj;jtpy;iy 55/ Though P.W.1 has stated in his chief examination that the respondent/wife told that she is not interested in sexual intercourse, there is no such pleading in the petition. Any amount of oral evidence without pleading cannot be looked into. Similarly, in his chief examination, P.W.1 has stated that before the doctor the respondent/wife has stated that she is not interested to have a child. But there is no such pleading in the petition.

56. It is an admitted fact that on 7.9.2001 the respondent/wife complained of leg pain and the appellant's father took her to Dr.M.Subramaniam M.S. (Ortho); on 11.9.2001 she complained of eye pain and she was taken by the appellant to Dr.Radhika, Ophthalmologist; on 17.9.2001 she complained of severe stomach pain and she was taken to Dr.Radha Madhavan by the appellant's mother. The aforesaid facts have been stated in the petition and have been admitted by P.W.1 in his evidence. But the Family Court has observed that the said allegations have not been proved by the respondent/wife by adducing medical evidence. Admitted facts need not be proved. This simple proposition of law that has not been kept in mind by the Family Court.

57. It is relevant to point out that even in Ex.P.3 dated 26.11.2001 the letter written by the respondent/wife to her husband before the filing of the divorce petition, she has stated as follows:-

"Regarding our Wedding night (nuptial) you have to understand that I had entered a new atmosphere of your house and the only other members present in the house were your mother and sister. How can a just married girl be without shyness, fear and anxiety on her first night. In spite of that, I cooperated fully with you on the wedding night and all the subsequent nights I stayed with you."

"I have lived with my parents and only sister for more than 20 years in a very homely atmosphere. About my timid nature and shy behaviour my parents have spoken to you and your parents you admired my softness and discipline. Your father praised me whenever occasion permitted and I thank him for that."

"I was a darling of my house. It takes some time for me or my parents to adjust to each one's absence."

"Our relations and friends say that newly married couple go for honeymoon for developing their better understanding of each other. Till today we never went anywhere you had decided to stay at home the whole of your 20 days of leave (granted by your office). the local Valluvar Kottam, beach, and a Cinema were only outings I had with you and where we could hardly understand each other."

"During the course of conversation your mother spoke badly at which my father raised a logic point that, while your mother has been so fond of her father who visits your house almost every day. Why you restrict us even talking over phone ? I also feel the same."

"Did you not repeatedly utter the word "divorce" in the Cinema Theatre even during the show was running? A wedded wife is not a use and throw property . Do you want to justify all your actions of your family members including you and blame my parents for the simple reason of questioning you all, out of sudden disappointment on your indifferent attitude?

"Apart from this my parents were shocked when your parents wanted and demanded 3 Lakhs (Rupees Three Lakhs Only) as they have a plan to buy your adjacent flat in which your are living for rent."

" Your mother insisted to pay atleast 2 Lakhs within a month and the balance after some time. She also made an indirect threat the happiness of their daughter (myself) depends on the response to their demand. Now I understand that the threat of divorce has come directly from you on the inducement of your parents."

58. But the aforesaid averments in the letter dated 26.11.2001 have neither been referred to nor denied in the petition or in the evidence of P.W.1. The respondent in her cross examination has stated as follows:-

ehd; rhJthd bgz;/ kpft[k; mikjpahd bgz;/ bgw;nwhh;fis rhh;e;J ,Ug;ngd;/ vdf;F FHe;ij kdJ/ 59/ In her chief examination also she has stated that with full mind and heart consented to the marriage and there was no question of the marriage being performed against her will. She has deposed in her chief examination that at the time of engagement she was asked to sing songs and she sang some songs. She has also deposed that the appellant had come to her house to see the wedding dresses and on that occasion, the appellant interacted with her, but the same had not been rebutted in the cross examination. In her cross examination, she has deposed as follows:-

"v';fSf;Fs; jhk;gj;jpa cwt[elf;ftpy;iy/ ehd; jhd; Kjyput[ntz;lhk; vd;W brhy;yptpl;nld;/ ,jw;F vdf;F Tr;r Rghtk; ,Uf;fpwJ/ 60/ A perusal of the cross examination of R.W.1 shows that none of the allegations made by P.W.1 in the petition as well in his evidence as to what had happened during the first night have been suggested to R.W.1. It has not even been suggested to R.W.1 that the appellant's mother did not demand Rs.3.00 lakhs as dowry for purchasing a flat. It has also not been suggested to R.W.1 that she is suffering from such mental disorder and to such an extent that the appellant cannot reasonably be expected to live with the respondent. It has not been suggested to her that she told the appellant that she was not willing for the marriage with the appellant and she did not like the appellant etc.

61. It is also pertinent to point out that in his chief examination itself, the appellant/husband has stated as follows:-

vd;id gythwhf Jd;g[Wj;jpajhYk; vjph;kDjhuh; fy;ahzj;jpw;F Vw;wth; myy vd;gjhYk;. giHa epr;rajhk;gyk; ele;jij brhy;yhjYk; mtiug;gw;wp tptu';fs; kiwj;Jtpl;ljhYk; bfhLikgLj;jpajhYk; ehd; tpthfuj;J nfl;L kD jhf;fy; bra;Js;nsd;/

62. But he has not stated that because of the alleged mental disorder, the respondent wife behaved with him or his family members in an aggressive manner or indulging in any violent act. He has also not even deposed or suggested to R.W.1 that because of the mental disorder or mental illness of the respondent/wife it will not be possible for him to live with the respondent/wife any longer. P.W.2 also in his chief examination has not mentioned about any abnormal behaviour of the respondent/wife. He has not deposed about the mental status of the respondent/wife and has not stated that at any point of time she behaved violently and it would not be possible for his son to live with the respondent because of her mental condition. P.W.3 has also not stated in his evidence about the mental condition of the respondent/wife. Though P.Ws.1 to 4 have stated that on 20.9.2001, the respondent/wife removed her Thali and thrown on the floor, the same has not been mentioned in Ex.R.3 letter written by the appellant to the respondent. In Ex.R3 what he has stated is as follows:-

"Just before leaving, you attempted to remove your thali twice"

but there is absolutely no mention about the removal of Thali as spoken by P.Ws.1 to 4 and as stated in the petition. If really, the respondent had removed her Thali twice as alleged by the appellant and the witnesses, the same would have been definitely mentioned in Ex.R3. Even in the complaint, dated 24.11.2001 lodged by the mother of the appellant, which forms part of Ex.P.4, the alleged removal of Thali by the respondent/wife has not been referred to. For Ex.R.3 letter written by the appellant, the respondent/wife sent a detailed reply Ex.P.4, for that no reply has been received. It has also not been referred to in the petition. Thus the whole story regarding removal of Thali by the respondent appears to be only an invented reason to make out a case for obtaining a decree for divorce.

63. So, we are of the considered view that if, as alleged by the appellant and other witnesses examined on his side, the respondent and her family members had indulged in an unruly behavior as alleged and the same had been witnessed by the neighbours at least anyone of the neighbours could have been examined, but none have been examined and therefore, in the absence of any corroboration by any independent witness, we are unable to believe the evidence of P.Ws.1 to 4 regarding the alleged incident that took place on 20.9.2001. Therefore, the said alleged incident has not been proved by adducing acceptable evidence. For the aforesaid reasons, we are unable to accept the evidence of P.Ws.1 to 4.

64. In her complaint, dated 25.11.2001 before the Sub Inspector of Police, Magalir Kaval Nilayam, Adayar, she has mentioned about the demand made by her mother-in-law for Rs.3.00 lakhs and about her inability to pay the said amount. She had referred to the efforts taken for reconciliation

and the refusal to take her back to the matrimonial home. She has also referred to the phone calls made by her to the appellant. She has also referred to the invitation extended to the appellant and his family members by the parents of the respondent for Deepavali. She has also mentioned that she had not done anything or spoken any words to wound their feelings and her parents have gone out of their way to satisfy their un-satiable demand. She has finally only requested for the intervention of the Sub Inspector of Police and speak to her in-laws so that rapprochement could be effected and nowhere she had sought for any criminal action to be taken against her husband or her in-laws. In fact, as rightly contended by the learned counsel for the respondent that no case was registered against the appellant and his parents and only counseling was conducted and as the counseling failed both the parties were advised to seek appropriate remedy before the civil court. When the respondent wife had ventilated her grievances in her complaint to the police for which she is legally entitled to, it cannot be said that the same will amount to causing mental cruelty to the appellant. Therefore, the finding of the Family Court that the lodging of false complaint as if the appellant and his family members had demanded Rs.3.00 lakhs as dowry has caused mental cruelty to the appellant is erroneous. In fact, as discussed above, in the course of cross examination of R.W.1, it has not even been suggested to her that no demand for Rs.3.00 lakhs as dowry had been made by appellant's mother as spoken to by her in her chief examination. Thus, the said allegation of demand for dowry goes un-rebutted. Therefore, it cannot be said that the false allegations have been made by the respondent/wife regarding demand for dowry. Therefore, in our considered view the alleged acts of cruelty against the appellant have not been proved and therefore, the Family Court is not right in granting a decree for divorce on the ground of mental cruelty.

65. As far as the allegation regarding non consummation of marriage is concerned, we are of the considered view that the Court below has not considered the said issue in the proper perspective and has not properly considered the evidence of R.W.1 and the facts and circumstances of the case. As pointed out above, R.W.1 in her evidence has stated that she is innocent, peace loving girl, solely depending on her parents and her mind is that of a child (FHe;ij kdJ). She has also stated in her Ex.P.3 letter that the appellant had to understand that she entered a new atmosphere of his house and how can a just married girl be without shyness, fear and anxiety on her first night. She was the darling of her house and it takes sometime either for her or her parents to adjust to each one's absence.

66. She has also pointed out that the appellant availed 20 days leave at the time of marriage but he had not taken her for honeymoon as planned. Even when they went for a movie, in the cinema theater he had repeatedly uttered the word divorce. Even in a short period of 12 days, the appellant had threatened to divorce the respondent and as such, the same would have caused great mental stress and agony to the respondent. Even during the 12 days period as admitted by the appellant they have lived together only for 6 or 8 days . Had the appellant and his family members treated the respondent with love and affection without making any demand for further dowry and without insisting her parents to take her to a psychiatrist alleging that she is having mental illness and given an opportunity for her to settle down in the new environment of the matrimonial home, she would have adapted to the new environment and the marriage itself would have been consummated. Even assuming that the marriage had not been consummated, considering the fact that both of them have lived together only for 6 or 8 days, the said period cannot be considered to be a long period for

holding that the marriage had not been consummated and therefore, it has caused mental cruelty to the appellant as claimed by him.

67. In the decision reported in 2007 (3) CTC 464 (Samar Ghosh vs. Jaya Ghosh), the Apex Court culled out illustrations of 'Mental Cruelty' in paragraph 102, and laid down as follows:-

"(x) The married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to cruelty. The ill-conduct must be persistent for a fairly lengthy period, where the relationship has deteriorated to an extent that because of the acts and behavior of a spouse, the wronged party finds it difficult to live with the other party any longer, may amount to mental cruelty.

"(xii) Unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty."

68. The facts and circumstances of this case and the evidence available on record has to be considered in the light of the legal principles laid down by the Apex Court. As per the above legal principles, the married life should be reviewed as a whole and a few isolated instances over a period of years will not amount to "mental cruelty". The ill conduct must be persistent for a lengthy period.

69. In this case, admittedly, both of them have lived together only for a period of 12 days and even during this short period, no act or omission on the part of the respondent which has caused mental cruelty to the appellant has been established. It is too short a period to consider that any act on the part of the respondent had caused mental cruelty to the appellant. Similarly, unilateral decision of refusal to have intercourse for considerable period without there being any physical incapacity or valid reason may amount to mental cruelty. Therefore, the refusal to have intercourse should be for a considerable period and then only it will amount to mental cruelty. As stated above, within 12 days, both of them lived together only for 6 or 8 days and during that time even if there was no sexual relationship between them and therefore, the 12 days period cannot be considered to be a long period and the non consummation of the marriage between the appellant and the respondent during this short period will not amount to mental cruelty as contended by the learned counsel for the appellant/husband. Therefore, we are unable to sustain the finding of the Family Court on this aspect and hence, the same is set aside.

70. The respondent being a newly married girl and having been sent to the matrimonial home from her parental house, she has been totally uprooted from her parents house. She would be in the position of a sapling which has been plucked from the nursery and transplanted in some other place. Unless the newly transplanted sapling is watered and taken proper care of by the gardener or care taker, the newly transplanted sapling will not grow but it will wither away. Like that a newly married young girl in her matrimonial home will find it difficult to adapt to the new environment, atmosphere and circumstances and it will take some time for her to get adapted to the same and for that the love and affection of the members of the matrimonial home is a must. But from the evidence adduced in this case, it could be seen that neither the appellant nor his family members have treated the respondent with love and affection but have started finding fault with her and have

gone to the extent of saying that she is mentally ill and have started demanding dowry from her parents and insisted her to take treatment for mental disorder with a psychiatrist. The appellant had threatened to divorce her within 12 days and he had not taken her for honeymoon though he had availed 20 days leave. Thus it is clear that she had not been treated with love and affection and as admitted by her she is a timid girl and as such it would not be possible for her to adapt to the new atmosphere and environment in the absence of love and affection from her husband and in-laws and unless she adapts to the new environment and atmosphere it would not be possible for her to have sexual intercourse with the appellant. Therefore, the non consummation of the marriage during the short period of 12 days, cannot be a ground for holding that it will amount to causing mental cruelty to the appellant.

71. As has been laid down by a Full Bench of the Apex Court in the decision reported in AIR 2006 SUPREME COURT 1675 (Naveen Kohli v. Neelu Kohli), to constitute cruelty, the conduct complained of should be 'grave and weighty' so as to come to the conclusion that the petitioner spouse cannot be reasonably expected to live with the other spouse. It must be something more serious than 'ordinary wear and tear of married life'. The conduct taking into consideration the circumstances and background has to be examined to reach the conclusion whether the conduct complained of amounts to cruelty in the matrimonial law. Conduct has to be considered, in the background of several factors such as social status of parties, their education, physical and mental conditions, customs and traditions. It must be of the type as to satisfy the conscience of the Court that the relationship between the parties had deteriorated to such an extent due to the conduct of the other spouse that it would be impossible for them to live together without mental agony, torture or distress, to entitle the complaining spouse to secure divorce. The Court dealing with the petition for divorce on the ground of cruelty has to bear in mind that the problems before it are those of human beings and the psychological changes in a spouse's conduct have to be borne in mind before disposing of the petition for divorce. However, insignificant or trifling, such conduct may cause pain in the mind of another. But before the conduct can be called cruelty, it must touch a certain pitch of severity. It is for the Court to weigh the gravity. It has to be seen whether the conduct was such that no reasonable person would tolerate it. It has to be considered whether the complainant should be called upon to endure as a part of normal human life. Every matrimonial conduct, which may cause annoyance to the other, may not amount to cruelty. The foundation of a sound marriage is tolerance, adjustment and respecting one another. Tolerance to each other's fault to a certain bearable extent has to be inherent in every marriage. Petty quibbles, trifling differences should not be exaggerated and magnified to destroy what is said to have been made in heaven. All quarrels must be weighed from that point of view in determining what constitutes cruelty in each particular case and as noted above, always keeping in view the physical and mental conditions of the parties, their character and social status. A too technical and hypersensitive approach would be counter productive to the institution of marriage. The Courts do not have to deal with ideal husbands and ideal wives. It has to be deal with particular man and woman before it.

72. But unfortunately the Court below has not applied the aforesaid legal principles to the facts of this case while considering the allegation of mental cruelty. We are of the considered view that the Family Court has taken a too technical and hypersensitive approach without realising that it would be counter productive to the institution of marriage. The acts alleged against the respondent cannot

be said to be such that no reasonable person would tolerate it. Therefore, we are of the considered view that the Court below is not right in granting a decree of divorce on the ground of mental cruelty.

73. As far as the alleged suppression of the real reason for the cancellation of the earlier marriage after the engagement of the respondent with one Ramachandran is concerned, it has to be pointed out that in his cross examination, P.W.1 has stated as follows:-

"vdJ jpUkzj;jpw;F Kd;g[vjph;kDjhuUf;F ntW egUld; epr;rak; Md tptuk;. mjhtJ me;j khg;gps;is mbkhp;fh bry;ytpUe;jjhy; vjph;kDjhuh; mbkhp;fht[f;F bry;y tpUg;gk; ,y;yhjhy; me;j jpUkzk; epd;Wtpl;l tptuj;ij v';fs; tPl;lhhplk; vjph;kDjhuh; jug;gpy; TwpaJ vdf;Fj; bjhpa[k;/ 74/ Thus it is seen that the reason for cancellation of the marriage of the respondent earlier fixed with one Ramachandran is that the said Ramachandran after engagement got a job in U.S.A., but the respondent did not like to go to America and the same had been informed to the parents of the appellant and it was also known to P.W.1. Thus, the very allegation in the petition and in the evidence of P.Ws.1 to 3 on this aspect is totally false. Therefore, there is absolutely no suppression of any material fact attracting Section 12(1)(c) of the Hindu Marriage Act for annulling the marriage between the appellant and the respondent.

75. As far as the allegations that the respondent is suffering from mental disorder is concerned, we are of the considered view that the said allegation has not been proved and made out. In this aspect, the submission made by Mr.K.P. Gopalakrishnan, learned counsel for the appellant/husband basing reliance on the report Ex.C1 of C.W.1 cannot be countenanced.

76. What C.W.1 has stated is that it is difficult for such a person to lead a normal married life and they will require more training to lead normal married life; by giving proper training it may be possible for her to work on the relationship; undersocialised persons can lead a normal life if they are given proper training. In Ex.C1 report, C.W.1 Doctor has given his final impression as follows:-

a. Tmt. J. Anitha does not suffer from any mental disorder as listed in Chapter V of the World Health Organisation's International Classification of Diseases (10th edition 2007 version) or the American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders (DSM IV -TR).

2. Tmt. J. Anitha manifests Borderline Intellectual Functioning not amounting to Mental Regradation or Mental Subnormality.

3. Tmt. J. Anitha has deficits in social skills and abstract thinking that themselves not clinically significant.

4. There is no prima facie evidence that Ms. J. Anitha cannot settle down to satisfactory married life if she is provided a conducive environment to do so.

5. Less than two weeks of married life cannot form basis for a long term decision of an individual's marriage ability or marital capacity."

77. The aforesaid report shows that the respondent is not suffering from any mental disorder.

78. In this context, it will be useful to refer to Section 13(1)(iii) of the Hindu Marriage Act, which reads as follows:-

"13. Divorce (1) xxxxxxxxxx

(iii) has been incurably of unsound mind, or has been suffering continuously or intermittently from mental disorder of such a kind and to such an extent that the petitioner cannot reasonably be expected to live with the respondent.

Explanation : - In this Clause -

(a) the expression "mental disorder" means mental illness, arrested or incomplete development of mind, psychopathic disorder or any other disorder or disability of mind and includes schizophrenia;

(b) the expression "psychopathic disorder" means a persistent disorder or disability of mind (whether or not including sub-normality of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment; or"

79. The learned counsel for the appellant relied upon the explanation to Section 13(1)(iii) of the Act, which says that the expression "mental disorder" includes incomplete development of mind and psychopathic disorder. According to the learned counsel as the medical evidence shows that there is Border Line Intellectual Functioning IQ 85 which will amount to sub-normality of intelligence, which would also include 'disability of mind', the Court below is not right in holding that the respondent is not suffering from any mental disorder, but the said contention cannot be countenanced for the reason that Explanation 'b' to Section 13(1)(iii) of the Act cannot be read in isolation as sought to be done by the learned counsel for the appellant but it has to be read as a whole. The expression "psychopathic order" means a persistent disorder or disability of mind which results in abnormally aggressive or seriously irresponsible conduct on the part of the other party, and whether or not it requires or is susceptible to medical treatment. 80. It has to be pointed out that in Ex.R-3-letter written by the appellant to the respondent it has not been alleged that the respondent / wife is suffering from mental disorder. In Ex.R-3-letter the appellant has stated that noting her behaviour on 12.09.2001 they thought it will be prudent if a psychiatrist is consulted; on 15.09.2001 she was taken to Dr.Mohan Raj, M.D., Psychiatrist, at Vantage Plaza, L.B.Road, Adyar, Chennai, by her father; the Doctor desired to see her with the appellant again in the same evening; after counseling on the 15th evening at 07.30 pm, the Doctor informed the appellant that she was suffering from over anxiety; he advised the respondent to settle in a new house and slowly gain confidence, but it is not stated that the Doctor had stated that she is suffering from any mental disorder. If really the respondent / wife was suffering from mental disorder and when admittedly

she had been taken to Dr.Mohan Raj, Psychiatrist, the appellant would have certainly mentioned about the same in Ex.R-3-letter and thus, the non-mentioning of the same shows that the allegation of mental disorder in the petition is only an after thought and has been invented only as a reason for obtaining dissolution of marriage.

81. In this case we have already pointed out that there is absolutely no evidence on the side of the appellant that the respondent at any point of time acted in an abnormally aggressive or seriously irresponsible manner. Therefore, the explanation "b" to Section 13(1)(iii) of the Act is not attracted. Further, it has to be pointed out that admittedly, the respondent is a first class B.Com., Graduate and in fact she got admission to M.Com., in Stella Mary's College and she had to discontinue her post graduation course as her parents wanted to give her in marriage. She has also deposed that she is good at vocal and instrumental music. Further, it has to be pointed out that if she lacks mental development or her intelligence is sub-normal or very low, she could not have withstood the aggressive cross examination made by the appellant's counsel. A reading of her cross examination shows that she had understood all the questions put to her and answered them in a normal way. Therefore, we do not find any abnormality in her answers. R.W.1's evidence shows that she had taken treatment for over anxiety with Dr. Nambi Rajan prior to her marriage and she has also mentioned about the name of the tablet and strength of the medicine. Therefore, the contention of Mr.K.P.Gopalakrishnan, learned counsel for the appellant that the respondent does not even know the medicines taken by her is not correct. There is no evidence to show that the respondent was treated for mental disorder prior to her marriage and therefore, there is no suppression of any material fact concerning the respondent/wife as alleged. Therefore, we are of the considered view that there is absolutely no evidence to hold that the respondent/wife is suffering from mental disorder. It is pertinent to point out that what is required to be proved for the purpose of Section 13 (1) (iii) of the Hindu Marriage Act, 1955, is that the respondent / wife is not only suffering from mental disorder, but also of such a degree and extent that the appellant / husband cannot reasonably be expected to live with her as her spouse. We are of the considered view that this has not been made home at all from the evidence on record. Therefore, the Court below is right in holding that the alleged mental disorder of the respondent/wife has not been proved and has rightly rejected the petition for divorce on the ground of mental disorder.

82. Now let us consider the decisions relied upon by the appellant's counsel:-

a. In the decision reported in (2010) 1 MLJ 889 (T. Narayanasamy vs. N. Kaleeswari), the learned Single Judge of this Court has come to the conclusion that the parties have been continuously living separately without sincere attempt or any intention to have reunion between them and therefore, the continuance or allowing the existence of marriage between them will not serve any purpose and hence, their marital relationship has to be put to an end by dissolving their marriage and has also come to the further conclusion that the marriage has broken down irretrievably and on that ground a decree for divorce has been granted. But in this case, the respondent/wife had taken serious efforts as could be seen from her letters to her husband and in-laws and her evidence. Moreover, irretrievable break down of marriage being not a ground enumerated under section 13 of the Act, a decree for divorce cannot be granted on that ground.

b. In *N. Shankar vs. S.Saraswathi* (2009-5-L.W-781), the Division Bench of this Court has held that the denial of marital comforts to each other for a long period of life undoubtedly will lead to mental cruelty. Further, the Division Bench has held that reckless and serious allegations regarding extra marital affairs will amount to mental cruelty. Therefore, the facts of that case are totally different from the facts of the case on hand and hence, the said decision is not applicable to the case on hand.

c. In *D. Nagappan vs. T. Virgin Rani* (2009-3-L.W.708), the Division Bench has held that a false allegation of illicit intimacy against the husband will amount to mental cruelty. But in the case on hand such allegations have not been made by either of them. Therefore, the said decision is not applicable to the case on hand. In the very same decision, it has been further held that the Family Court should independently examine the facts in each case before granting the prayer for divorce as well as the restitution of conjugal rights. The said principle will be considered at the time of considering the appeal filed by the respondent/wife against the dismissal of her petition for the restitution of conjugal rights.

d. In the decision reported in 2009-2-L.W.192 (*Satish Sitole vs. Smt.Ganga*) by invoking its power under Article 142 of the Constitution of India, the Apex Court dissolved the marriage on the ground that the marriage has irretrievably broken down. Therefore, the said decision is not applicable to the facts of the case on hand.

e. Since the facts of the case in the decision reported in 2009-2-L.W.43 (*C. Anantha Jeyakumar vs. C. Murugapriya*) are totally different from the facts of the case on hand, the said decision is not applicable to the case on hand.

f. Since in the decision reported in (2008) 4 MLJ 1172 (*R. Anand vs. P.Indu*), the allegations about the dowry harassment were found to be false, the learned Single Judge has held that it will amount to mental cruelty. But in the case on hand, the allegations about the dowry demand have not been found to be false and in fact, the same has been substantiated and therefore, the said decision is not applicable to the case on hand.

g. On the basis of the facts, the Division Bench of this Court in the decision reported in 2008-3-L.W.864 (*Dr.Gopal Ramanathan vs. Jayashree*) has come to the conclusion that the marriage has broken down irretrievably and the husband and wife were living separately for 20 years and on that ground the marriage was dissolved. The facts of that case are totally different from the facts of the case on hand and therefore, the same is not applicable.

h. Similarly, in the decision reported in (2007) 5 MLJ 1397 (*N.Subramani vs. T.Shanta*), the decree for dissolution was granted on the ground that the marriage has irretrievably broken down and therefore, the said decision is not applicable to the case on hand.

i. In *Smt. Mayadevi vs. Jagdish Prasad* (2007-4-L.W.-249), the Apex Court on the facts of that case came to the conclusion that the husband was subjected to physical and mental cruelty by the wife and on that ground the decree for divorce was granted. But in this case, we have already discussed and pointed out that the alleged acts of mental cruelty have not been established and therefore, the

said decision is not applicable to the facts of the case on hand.

j. The decision in A. Viswanathan vs. G. Lakshmi @ Seetha (2007-2-L.W.902) is not applicable to the facts of the case on hand.

k. In the decision reported in 2006-2-L.W.606 (Naveen Kohli vs. Neelu Kohli), the Full Bench of the Apex Court on a consideration of the facts and evidence of that case came to the conclusion that the mental cruelty as alleged by the husband had been established and further held that the marriage was totally dead and taking into consideration of the extraordinary facts and circumstances of that case dissolved the marriage between the parties by directing the appellant to pay Rs.25,00,000/- to the respondent towards maintenance. In that decision, the Apex Court had recommended to the Union of India to seriously consider bringing an amendment in the Hindu Marriage Act, 1955 to incorporate irretrievable breakdown of marriage as a ground for the grant of divorce. But the Hon'ble Apex Court has not granted decree of divorce on the ground of irretrievable breakdown of marriage and therefore, the said decision is not applicable.

l. In the decision reported in 2006-2-L.W.419 (Vinita Saxena vs. Pankaj Pandit), the Apex Court has considered what is mental disorder and when it will amount to cruelty. In that case, the Apex Court has come to the conclusion that the medical evidence has proved the mental disorder of the respondent beyond doubt. The Apex Court has pointed out that Schizophrenia is one of the most dangerous/damaging form of mental disorder and on that ground the decree for divorce was granted and therefore, the facts of that case are totally different from the facts of the case on hand and therefore, the said decision is not applicable to this case.

m. In Durga Prasanna Tripathy vs Arundhati Tripathy (2005(4) CTC 287), on the ground of irretrievable break down of marriage, the decree for divorce by exercising the powers under Article 142 of the Constitution of India was granted by the Apex Court and therefore, the said decision is not applicable to the case on hand.

n. In A. Jayachandra vs. Aneel Kaur ((2005) 2 SCC 22), the Apex Court has laid down that what will constitute mental cruelty. In that case, the wife used abusive language and made allegations of adultery against the husband and the Apex Court has held that it will amount to causing mental cruelty. Therefore, the said decision is not applicable to the facts of this case as the facts of that case are totally different.

o. In the decision reported in 2003-4-L.W.-609 (Vijayakumar Ramachandra Bhate vs. Neela Vijaykumar Bhate), the Apex Court has held that the averments, accusations and character assassination of wife made by the appellant/husband in the written statement will amount to mental cruelty for sustaining her claim for divorce under Section 13(1)(i-a) of the Act. In this case, no such ground is available and therefore, the said decision is not applicable to the facts of this case.

p. The facts of the case in P. Natarajan vs. Thamizmani (2002-2-L.W.250) and the facts of this case are totally different and therefore, the said decision is not applicable to the case on hand.

83. The issue that remains to be considered is as to whether the Family Court is right in dismissing O.P.No.2268 of 2007 filed by the respondent / wife under Section 9 of the Hindu Marriage Act seeking Restitution of Conjugal Rights.

84. The Court below, in its judgment, has observed that the respondent for the past eight years had deserted the appellant without any valid reasons and there is no chance for reunion between the appellant and the respondent considering the facts and circumstances of the case. It has further observed that the respondent / wife has not taken any steps for reunion and therefore she is not entitled for the relief of Restitution of Conjugal Rights.

85. The aforesaid observation have been made by the Court below without even discussing the oral evidence of R.W.1 and the documentary evidence adduced by her. Ex.P-3 is the letter, dated 26.11.2001 written by the respondent / wife to her husband / appellant, as a reply to Ex.R-3-letter written by her husband on 08.10.2011, wherein, she has point-by-point replied her husband's allegations and she has mentioned that her parents' visited the bank and met an official there to initiate efforts for reunion between the families and not to spoil the image of the appellant and she has also mentioned that her parents have been making all efforts to settle the matter amicably. She has expressed her hope that the appellant will take her into his hold as she has clearly explained to him all the points he had raised. Ex.R-7 is a letter, dated 06.10.2001 written by the respondent to her in-laws wherein she has mentioned that she had been waiting for them to come as they had told of their arrival to take her back. Ex.R-8 is another letter written by the respondent / wife to her husband / the appellant herein on 08.02.2002. It has been written in a friendly manner enquiring about his official visit to Madurai and informing him about the Homam and Abishegam performed in various temples and she has enclosed the prasadam to him and in the concluding portion of the letter, she has written as follows:-

I pray Almighty to restore happiness in our life. My respects to father, mother and grandfather .

Ex.R-9 is another letter, dated 26.02.2002 written by the respondent / wife to her husband / appellant herein wherein she has mentioned that he had not replied to her earlier letters. She has requested the appellant to come to her house to take her with him. She has further stated as follows:-

I still pray for a fine understanding of our families and enable us to live in harmony and peace .

86. As rightly submitted by Mr.Rangarajan, learned counsel for the respondent, that R.W.1 in her evidence has categorically stated that she is very much interested in living with her husband and has spoken to about the steps taken by her parents to reconcile the differences between the two families and the efforts taken to bring about reunion. But unfortunately the Court below has totally overlooked all these facts and has not cared even to look at the evidence of R.W.1 and letters written by her to her husband much less to discuss the same.

87. The aforesaid letters written by the respondent / wife to her husband / appellant and her in-laws make it abundantly clear that she was always wanting and willing to go back to the matrimonial

home, but there was no response from the appellant's side. Whereas there is no evidence on the side of the appellant / husband to show that the appellant took any efforts to take her back to the matrimonial home. The evidence on record clearly shows that even during the twelve days both of them lived together the appellant had threatened the respondent that he will divorce her. The demand for dowry of Rs.3 lakhs by the mother of the appellant seems to be the main reason for the separation, but in spite of this, the respondent wants to live with the appellant. But overlooking all these facts and evidence, the Court below has erroneously come to the conclusion that the respondent had not taken any steps for reunion. The said finding of the Court below and the finding that the respondent had deserted the appellant without any cause is perverse and not based on any evidence and accordingly the said findings are set-aside.

88. We are constrained to observe that only because of the perverse and unsustainable order passed by the Court below, the life of two youngsters have been ruined for the past nine years. Had the Family Court considered the entire evidence, in the light of the well settled legal principles as stated above, the Court below would not have dissolved the marriage between the appellant and the respondent and in that event, there would have been a possibility for their reunion. But even now, it is not too late for the appellant and the respondent to calmly think about it, reunite and lead a peaceful life since there are no irreconcilable differences between the appellant and the respondent. Therefore, we hope and believe that the appellant and the respondent and more particularly the parents of the appellant will take sincere steps for their reunion.

89. The respondent / wife had not deserted the appellant / husband as observed by the Court below. Therefore, the respondent / wife is entitled for the relief of Restitution of Conjugal Rights and accordingly, the order and decretal order of the Family Court, dismissing O.P.No.2268 of 2007, is set-aside.

For the aforesaid reasons, CMA Nos.902 and 903 of 2010 filed by the respondent / wife stand allowed and CMA No.2407 of 2010 filed by the appellant / husband stands dismissed. However, there will be no order as to costs. Connected M.P. is closed.

(K.M.J. ,) (G.M.A.J. ,)
27.02.2012

Index : Yes / No

Internet : Yes / No

srk

Office to note.: Issue order copy on or before 05.03.2012

K.MOHAN RAM J. ,

and

srk/rnb

To
1. Principal Family Court, Chennai,

Pre-Delivery Judgment in
C.M.A.Nos.902, 903 and 2407 of 2010
and M.P.No.2 of 2010

Date : 27.02.2012

M.P.No.2 of 2010 in CMA No.903 of 2010

K.MOHAN RAM, J.,
AND
G.M.AKBAR ALI, J.,

Order of the Court was made by K.Mohan Ram, J.,

After judgment in the appeals was delivered, Mr.Rangarajan, learned counsel for

"....to direct the respondent to pay an amount of Rs.1,00,000/- towards the value of the furniture mentioned in item II and also Rs.10,000/- which was paid by the petitioner's father at the time of betrothal for dresses and also return of other articles mentioned in item I to the petitioner and to pass such further or other orders as this Hon 'ble Court may deem fit.

Schedule of properties I item :

1.Gold chain

2.Gold bracelet

3.Diamond ring

4.Panchapatram Utthranayiam

5.Cash worth Rs.10,000/- for dresses II item :

1.Wooden diwan cot.

2.Godrej bero

3.Dressing table and stool

4.Two wooden palagai with silver khumi in the corner

5.one double size duroflex cushion mattress

6.Four cushion pillows big size"

and it has to be disposed of.

2. It has to be pointed out that while arguing the appeals, no submission was made in respect of this petition. Even otherwise, this petition has been filed pending the above appeal and no such relief was sought for before the Family Court in the original petition. Therefore, we are of the considered view that this petition cannot be entertained by this Court at this stage. However, the petitioner is at liberty to seek an appropriate remedy before the appropriate forum by filing an appropriate application.

3. With the above observation, the above petition is dismissed.

(K.M.J.,)

(G.M.A.J.,)

27.2.2012

RS

M.P.No.2 of 2010 in
CMA No.903 of 2010

Pre-Delivery Judgment in
C.M.A.Nos.902, 903 and 2407 of 2010
and M.P.No.2 of 2010

To

The Hon'ble Mr. Justice K.MOHAN RAM
and

The Hon'ble Mr. Justice G.M.AKBAR ALI

Most Respectfully submitted:

S.Ramkumar
/srk